LAW SOCIETY NUMBER.

The Solicitors' Journal

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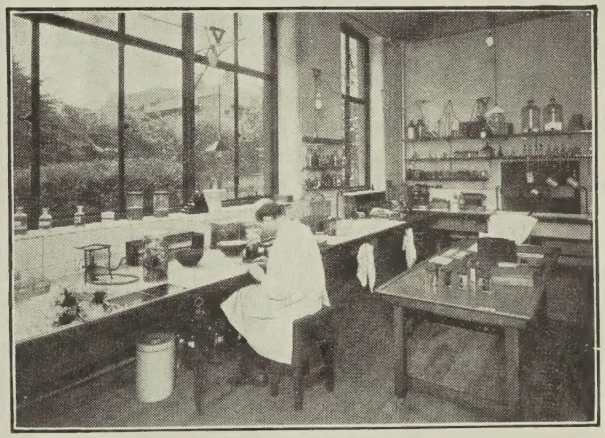

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The Solicitors' Journal

VOL. LXXVI. **Saturday, October 8, 1932.** No. 41

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Current Topics.

The Law Society at Bristol.

THE Forty-eighth Provincial Meeting which took place at Bristol under the presidency of Mr. C. E. BARRY, on the 3rd to the 6th October, inclusive, has, as was expected, proved wholly successful, and most enjoyable to those who were fortunate enough to be able to be present. A general report of the proceedings appears at p. 693 of this issue, together with the text of the President's address and the Papers read by Mr. J. W. ROBSON and Sir WILLIAM HART, and a report of the discussions thereon. A report of the Banquet held on Tuesday evening appears at p. 704. The other Papers read at the meeting and the discussions thereon will appear in subsequent issues.

Solicitors in the Government.

THE appointment of Dr. E. LESLIE BURGIN, M.P., to the post of Parliamentary Secretary to the Board of Trade is a well-merited recognition of the high place he has won in the House of Commons, in which he has sat for several years, and it will at the same time call forth heartiest congratulations from his fellow-members in the solicitor branch of the profession. Dr. BURGIN has a distinguished academic record, prize after prize and scholarship after scholarship falling to him. For some time, it will be remembered, he was Principal and Director of Legal Studies to The Law Society, a post which his own studies and writings eminently fitted him to adorn. His appointment is also of interest as a recognition of the claims of solicitor members of Parliament to consideration in the distribution of posts in the Ministry. At one time members of the Bar were alone of the legal profession considered in such matters, but since the late Lord WOLVERHAMPTON and Sir DONALD MACLEAN attained Cabinet rank, and Mr. LLOYD GEORGE reached the highest position of all as Prime Minister, the solicitor branch has come to be recognised as at least not out of the running when vacancies occur in the ministerial offices, and that is something.

Potential Peers.

NOT the least interesting feature of the extracts which *The Times* published recently from the forthcoming biography of Lord OXFORD AND ASQUITH, was the list of those who, or some of whom would, in the event of the persistent recalcitrancy of the House of Lords towards the Parliament Bill, have been asked to permit their names to be submitted to the KING with a view to their being created peers, and thus turn the scale in favour of the Government in carrying the measure. This was the second occasion on which a threat to create peers was sufficient to overcome the opposition of the Lords, and it was thus a notable fact in our constitutional history. On the personal side it has an interest for legal readers in that a considerable number chosen from both branches of the profession are represented in the list—ARTHUR COHEN, K.C., W. PHIPSON BEALE, K.C., Sir JOHN GORST, K.C., Sir DAVID BRYNMOR JONES, K.C., B. F. HAWKSLEY, Sir FREDERICK POLLOCK, and ROBERT (now Sir ROBERT) WALLACE, K.C., being among those selected for promotion in dignity. The major portion of these have since passed away, and indeed have been almost forgotten, but a few survive and are still keenly interested not only in legal but in political affairs.

Judicial Salaries and Pensions.

IN the Finance Accounts of the United Kingdom which have just been published as a blue book we find the salaries of the judges now shown at the reduced sums fixed under the National Economy Act, 1931, the scope of which in this matter gave rise, it will be remembered, to a great deal of animated discussion in legal circles on the passing of the measure. Each of the Law Lords is credited as receiving, not, as formerly, the salary of £6,000, but the reduced amount of £5,683 13s. 11d., the Lord Chief Justice receives £7,578 5s. 3d., the Master of the Rolls £5,683 13s. 11d., and the various Lords Justices and puisnes £4,736 8s. 3d. The paid members of the Judicial Committee of the Privy Council were Sir JOHN WALLIS, who received £784 3s. 9d., Sir GEORGE LOWNDES £1,947 5s. 8d., and Sir D. F. MULLA £1,913 19s. English judicial pensions, that is, those paid to ex-Lord Chancellors, ex-Lords of Appeal in Ordinary, former members of the Court of Appeal and High Court, ex-county court judges, and three stipendiaries, totalled nearly £182,000—no very extravagant amount in view of the number of recipients and their long years of active service in arduous work.

A Father, but not a Parent.

IN a recent case turning on the construction of the Adoption Act, 1926, Mr. CLAUD MULLINS delivered himself of a criticism of its drafting which appears very well justified. The facts before him presented no complications. A husband and wife had recently adopted an illegitimate child, in respect of which the mother had obtained an affiliation order against the father. The adopters, then having the legal custody

of the child, came to the court to ask that the money payable under the order should thereafter be paid to them, as authorised by s. 3 of the Affiliation Orders Act, 1914. The father in turn summoned the mother of the child and asked that the payments should cease altogether. He based this claim on s. 5 (1) of the Adoption of Children Act, 1926, which provides that, on an adoption order being made, the rights, duties, obligations and liabilities of the parents shall cease and vest in and be exercisable by and be enforceable against the adopters. His short point was that, since the court had found that he was the father of the child, he was its parent, and therefore within the section. Although, as Mr. MULLINS observed, probably most children adopted under the Act are illegitimate, and a considerable proportion of them may be the subject of affiliation orders, those who drafted the Act have made no provision for such a case. Accordingly, Mr. MULLINS had to guess the intention of Parliament, with such guidance as he could find from cases decided under entirely different Acts, such as those dealing with cruelty to children. He cited *Butler* v. *Gregory* (1902), 18 T.L.R. 370, to the effect that a putative father may not be a "parent" within the Children Acts, but in that case the father was living with the mother, and no affiliation order had been made. *Ottley* v. *Fenn* (1900), 109 L.T. Jo. 175, was a case as to custody. The point is raised without an opinion being given in Mr. HALL'S "Law of Adoption," pp. 34-35, and see also HALSBURY'S "Laws of England," 2nd ed., vol. II, p. 593. Mr. MULLINS decided that the father was not a "parent" within the section, and further criticised the procedure which did not allow of an authoritative ruling of the High Court on such a statutory hiatus unless parties in a particular case appealed, at an approximate expense of at least £50, which few were in a position to do. Since Mr. MULLIN'S decision binds no one but the parties before him, the point still remains uncertain, and again his criticism appears well founded.

Broadcast Law.

THE "lawless science of our law" is being expounded to the public under the auspices of the British Broadcasting Corporation in a series of talks, the first of which was given by Lord MACMILLAN on 28th September. In the course of his remarks his lordship said that, although everybody is presumed to know the law, no steps whatever are taken by anybody to tell the layman anything about it. "It is not taught in our schools," said his lordship, "nor is it expounded, like other branches of study, in popular lectures and manuals." With the greatest of respect to his lordship, we hardly think that this statement is fair to the valuable popular lectures given in polytechnics, working men's colleges and evening institutes, or to the excellent popular manuals written by such authorities as Professor JENKS, Professor J. E. G. DE MONTMORENCY, the late Professor GELDART, His Honour Judge RUEGG, and many others. It is sometimes stated that manuals of this nature are not as lucidly written as the text-books on other scientific subjects, but even if this were true it would hardly be surprising if the rules governing our complicated modern existence were not themselves highly complex and difficult to explain. Moreover, the daily press ought not to be forgotten as an instrument of legal education, even though undue attention is given to the laws affecting gambling, drinking, Sunday entertainments, and motor traffic. His lordship also remarked, in dealing with the problem of how far the law ought to go in the direction of interference with the liberty of the subject, that "nowadays the law concerns itself with all sorts of things it never bothered about in former times, such as the quality of milk, the size of lobsters, and the hours within which one may buy chocolate or cigarettes." It may be said that liberty, "the chartered right of Englishmen," lies bleeding, especially when one contemplates ss. 2 and 3 of the Shops (Hours of Closing) Act, 1928, restricting the hours during which such noxious articles as table waters, sweets, chocolates, ice-cream, cigarettes and tobacco may be sold. One may even join with A. P. HERBERT in expressing bitter opinions about our licensing laws. With regard to the size of lobsters, his lordship was doubtless referring to s. 9 of the Fisheries (Oyster Crab and Lobster) Act, 1877, which forbids persons to take, have in their possession, sell, expose for sale, or buy for sale "any lobster which measures less than eight inches from the tip of the beak to the end of the tail when spread as far as possible flat." It is quite true that modern statutes such as the Public Health Act, 1875, and the Food and Drugs (Adulteration) Act, 1928, contain innumerable restrictions on individual liberty, but a decent and civilised life under modern conditions would hardly be possible without restrictions such as these. For this reason, among many others, the attempt of the British Broadcasting Corporation to "inform the common mind" on the important position which law occupies in modern life is a welcome innovation, and we wish it every success.

A Question of Sanctuary.

AN unusual interruption of the Sunday morning service at St. Martin's-in-the-Fields Church recently has been the subject-matter of certain newspaper comment. The facts were that a detective followed into church a man suspected of theft, and during the collection passed the plate to the suspect, who (it was alleged) promptly extracted half-a-crown in skilful manner from the plate. He was immediately arrested and charged with theft, but Mr. GRAHAM CAMPBELL (Bow Street) dismissed the case. Newspaper readers have commented on what they regard as having been a totally unnecessary interruption of Divine service; be that as it may, the correspondent who interests us is he who writes that, "Under the old institution of sanctuary such an outrage would have been impossible. Church soil was sanctified and protected from human punishment all who fled there." We have little patience with statements of this kind, for the privilege of sanctuary contained many important exceptions. Thus, persons apprehended with the stolen property on them could not afterwards take sanctuary; and we have it on the authority of "Coke" (Third Inst. 115) that felonies committed in churches always prevented the offender from availing himself of the privilege.

Yves, Patron of Lawyers.

THE announcement was made in the press recently that a French total abstinence society has taken ST. YVES as its patron, "a local saint popular in the Breton country districts," as one paper has it. This would appear to be something in the nature of an usurpation of the rights of the legal profession the whole world over, though it is doubtful whether many English lawyers are aware that they have any right to the patronage of ST. YVES (or IVES as he is often spelt in England). Perhaps it is not out of place therefore to recall his story at this time. YVES was a very prosperous thirteenth century Breton lawyer, and as upright as he was prosperous. Indeed it was said of him by the laity that he was "*advocatus et non latro, res miranda populo.*" Such a good-living man as YVES naturally wished to know who was the patron saint of his profession, and after much inquiry among the ecclesiastically learned, which culminated in an appeal to the Archbishop of the diocese, he was distressed to learn that lawyers had no patron, for as the Archbishop unkindly remarked "no lawyer had ever reached Heaven." The good YVES took this discovery so much to heart that he left his lucrative practice at the mercy of his junior partner and set out on a pilgrimage to Rome, where, after some difficulty, he secured an audience of the Pope himself. So impressed was the Holy Father by the serious plight of the legal profession that he called a meeting of the College of Cardinals and put the matter before them. After much debate a plan was decided upon. YVES was to be

led blindfold into a room in which were placed a number of statues of the saints, he was to be turned round as in a children's game, and the first saint he touched should be declared the patron of the legal fraternity. The appointed hour came and the hall of saints was packed with an interested crowd headed by the Pope himself and all the Sacred College. The blindfolded Breton attorney was led in, turned round and round by a page and then left, trembling with age and excitement, in the middle of the hall. He hesitated for a moment, then strode forward and grasped a statue. At once there was a subdued titter from the bystanders; YVES snatched the bandage from his eyes and to his horror found he was clutching an image of the Devil which formed part of the permanent adornment of the hall. Such was the shock at this ending of his hopes, and so wrought upon was he by the unkind laughter of the more worldly-minded and litigious Princes of the Church, that YVES fell dead from the shock. The Pope and the Sacred College were so moved by his fate that they declared that YVES was himself undoubtedly a saint, canonised him straightway, and declared him to be the patron saint of all lawyers. This took place 600 years ago, and it seems a pity that there are still many who believe that YVES chose our patron once and for all. Lawyers, arise and claim ST. YVES boldly, do not abandon him to the French teetotallers!

A New Arsenical Poison Terror.

AT a recent inquest at New Brighton upon the death of a widow woman, it was disclosed that she had eaten four "rat-poison" biscuits left on the table by her son. The son, giving evidence, stated that he had been informed by the person from whom he obtained the biscuits that they were "not injurious to human beings." In appearance the biscuits were exactly like ordinary edible biscuits, with composition in the centre and bore no indication of their nature or of the purpose for which they were intended. The county analyst gave evidence that they contained arsenic, and the woman had taken a fatal dose—though death was in fact due to shock and exhaustion following the washing out of the deceased's stomach after discovery of the mistake. Witness was of the opinion that the word "poison" ought to have been moulded on the biscuits and that they should have been coloured green. This was, of course, what should have been done; but we should like to know this: There is an Arsenic Act on the Statute Book which forbids the sale of arsenic except by qualified chemists, and also makes it an offence even for a chemist to sell it without adding colouring matter so as to prevent the possibility of its being taken in mistake. Yet this most deadly of all poisonous substances may be handed about in plain biscuits after the manner disclosed at the New Brighton inquest, and as, presumably, products of this kind may be said to come within the ambit of requisites for "agricultural" purposes (rat destruction being a distinctly agricultural necessity) there is nothing to prevent any village grocer from being licensed to sell these biscuits under the 1908 Regulations, which permit of the licensing of any person without any chemical knowledge or qualification to sell them!

Science, but not for Profit.

AN important point with regard to associations formed to promote art, science, charity, commerce or other useful objects and registered under s. 18 of the Companies Act was decided towards the end of last term in *In re Scientific Poultry Breeders Association* [1932] W.N. 199. The Scientific Poultry Breeders Association was formed in 1929 with objects which are sufficiently indicated by its name as a company limited by guarantee. The memorandum was settled with the view to applying for an order from the Board of Trade to dispense with the word "limited" in the title, and an application was made for that purpose, but owing to one of the clauses it did not succeed. The memorandum, however, definitely prohibited the division of any profits among the members, and provided that none of the governing body should be appointed to any position on the salaried staff. The association prospered until it became, if anything, too successful for its original constitution. Its membership and operations increased to such an extent, and the time and attention of the members of the council became so fully taken up with its affairs, they found they could not continue in office unless they were remunerated for their services. The association was perfectly able and willing to pay members of the council for loss of time, and certain alterations in the memorandum and articles removing the prohibitions against payment to them and appointment to a salaried office were proposed and duly carried. The matter then came before the court on a petition presented under s. 5 of the Companies Act, 1929, to alter the objects, and it was sought to bring the case under the sub-heading "to carry on its business more efficiently." But EVE, J., before whom the petition came, held in a considered judgment that he had no jurisdiction to sanction the proposed alterations. The provisions which it was proposed to alter were not, in his opinion, provisions with respect to the objects of the company at all, but part of its fundamental constitution, which could not be departed from. An association intended to promote a scientific object and not for profit cannot, therefore, by any alteration of its objects be turned into a company making a commercial profit with power to distribute that profit among the members, or a class of members. In so deciding the learned judge was following a decision of RUSSELL, J. (as he then was) in *In re Society for Employment of Women* [1927] W.N. 145, a Scottish case on somewhat the same lines being distinguishable.

The Michaelmas Term.

THE state of the lists of cases for hearing during the Michaelmas Law Sittings is far from encouraging when compared with the figures for the corresponding term of last year. Although the aggregate number is 2,851 as against 2,741 for the Michaelmas Term of 1931, the bulk of this increase is made up of appeals and cases in the Probate, Divorce and Admiralty Division, there being a marked decline in the business of the King's Bench Division and the Chancery Division. The number of causes and matters for hearing in the Chancery Division is 209, being eighty-nine less than that for the corresponding term of last year. As against 344 special jury actions in the King's Bench Division for the Michaelmas Term of last year, there are this year 338, including two in the new procedure list. The common jury actions number 453, including two in the new procedure list, a decline of thirty when compared with the lists of a year ago, and the non-juries show a fall of forty-nine, the number being 338, including forty-six new procedure actions. The increase in the number of cases for hearing in the Probate, Divorce and Admiralty Division is 235, the figure this year being 1,130. The appeals show a rise of twenty-one over the corresponding period of last year, and amount to 130, nine of which are inte locutory. By far the greater number of appeals are from the King's Bench and Chancery Divisions, there being sixty-nine from the former and twenty-eight from the latter, the remainder being composed of fifteen appeals from county courts in workmen's compensation cases, eight appeals from the Probate, Divorce and Admiralty Division and one from the County Palatine Court of Lancaster. There is also an increase in the number of appeals to the Divisional Court, the number this year being 173, as against 115 last year, this being mainly due to a rise of forty-six in the civil paper. If these figures reflect the general state of trade, things look uncommonly depressing. It might be said in mitigation of this gloom that the remarkable increase in the number of appeals denotes, not a decreasing confidence in the bench, but a growing determination on the part of the legal profession to make hay even though the sun is not yet shining.

Criminal Law and Practice.

"CAUTIONING" THE PRISONER IN COURT.

THERE are, by statute, various addresses which have to be made to persons in the dock.

Thus, speaking generally, a person charged with an offence punishable on summary conviction with more than three months' imprisonment is entitled to claim to be tried by a jury: Summary Jurisdiction Act, 1879, s. 17 (1); and he is to be informed of this right "before the charge is gone into." There are exceptions to the rule. The section itself excepts assaults. There is an obscurely worded exception for the case of the male prostitute: Criminal Law Amendment Act, 1912, s. 7 (2), which had to be explained by the High Court before most people could understand the enactment: *R.* v. *Dickinson: Ex parte Grandolini* [1917] 2 K.B. 393.

The word "before" in the section means exactly what it says: *R.* v. *Cockshott* [1898] 1 Q.B. 582; yet it needed still another case to force home this elementary truth: see *R.* v. *Hampshire JJ.*, 29 Cox C.C. 113; 46 T.L.R. 157.

A form of words is provided in the statute, but any other phrases to the same effect are in order. There is, too, a direction that the court is to let the defendant understand what he is doing, a direction that is, too often, ill observed.

The caution can be dispensed with in the case of a child, but if his parent or guardian is present he or she can make the claim for the child. In the juvenile courts parents and guardians are largely ignored. The Children and Young Persons Act, 1932, which comes into force on a date to be appointed by the Secretary of State, repeals the requirement altogether.

There is one, perhaps unexpected, result of s. 17. If the offence be one punishable with more than three months only on a second or subsequent conviction, the court cannot help sometimes being acquainted with a previous conviction before they begin to hear the case. If they learn of a previous conviction they cannot convict as for a first offence (*R.* v. *Beesby* [1909] 1 K.B. 849). The warning has then to be given, and presumably, if the accused elect summary trial, the proceedings would have to be recommenced. If he chose trial by jury all the witnesses would have to be re-called and the evidence cast into the form of depositions for transmission to the court of trial.

There has been discussion whether the accused must be present to elect in person. But there seems no reason in law why a solicitor should not consent, on his behalf, to summary trial. The advocate should, however, take care to be specifically instructed. If trial by jury is chosen the defendant must be before the court. The Indictable Offences Act, 1848, which applies directly trial by jury is chosen (s. 17 (1), *supra*), and see *R.* v. *Brown* [1895] 1 Q.B. 119, contemplates the presence of the accused: see, *inter alia*, s. 12 of the Criminal Justice Act, 1925, which provides a formal "caution" on committal for trial.

The caution under that section is the next to be discussed here.

The section is considerably more specific than the old law. On the one hand it does not inhibit the accused from making a frank statement by telling him that what he says may be given in evidence "against" him. On the other hand, it specifically requires him to be informed that he can give evidence on his own behalf and call witnesses.

The giving of the caution does not, of course, prevent the accused or his solicitor submitting that there is no case to answer, though this is often, if not usually, done immediately upon the close of the case for the prosecution and before the accused is formally addressed.

Again the words of an enactment have been held to mean exactly what they say. The accused is "not obliged to say anything" by the statute, and in spite of the efforts of various judges to get pressure put upon the accused to reveal his offence at the police court, he is definitely entitled to make the prosecution prove their case without assistance from him and pay the penalty of failure: *R.* v. *Naylor* (1932), 23 Cr. App. R. 177.

The defendant has to be informed that he has nothing to hope from any promise of favour or fear from any threat made to induce confession, which statement of the court may or may not be true, but that whatever he says will, notwithstanding the promise or threat, be in evidence at his trial. If no promise or threat is within the knowledge of the court this part of the address is unnecessary: *R.* v. *Sansome* (1850), 3 C. & K. 332; 4 Cox 203.

So much for indictable offences for which committal has to be made as such, and for summary offences which become indictable at the wish of the accused.

There remains the class of indictable offences triable summarily by virtue of s. 24 of the Criminal Justice Act, 1925. This jurisdiction was greatly extended by the Act cited, but was at the same time hedged about with provisos which have had little effect as a drag on the withdrawal of criminal cases from trial by jury.

Where the accused is charged with one of the scheduled offences the court can assume jurisdiction at any time with the consent of the accused. The charge has first to be reduced to writing and the choice put plainly and unequivocally to the accused. If he consents to summary trial he is forthwith to be asked if he pleads guilty or not guilty.

If the charge be obtaining money or goods by false pretences it is the duty of the court to explain what in law false pretences are and that a mere lying promise is not a false pretence: Summary Jurisdiction Act, 1899, s. 3. "Any further explanation" necessary is to be added. The best is to tell the accused what specific false pretence is alleged. The intent to defraud must not be forgotten: *R.* v. *Moss* (1931), 23 Cr. App. R. 132.

A child may at present be dealt with if the parent or guardian does not object (Summary Jurisdiction Act, 1879, s. 10), and a young person by consent (s. 11) upon any charge other than homicide. The Children and Young Persons Act, 1932, s. 15, will, when in force, alter this as to children. A child's offences other than homicide all become triable summarily without his consent or any one else's. Young persons will still have to consent, so that they must be addressed as adults are addressed. The differences there are that "young person" will mean one who has attained fourteen years and is under seventeen (instead of sixteen as now), and that the discretion of the court may be exercised at any time during the hearing of the case. Usually it is so exercised, but some have been deterred by the words "by the evidence" in s. 11 (2) of the Summary Jurisdiction Act, 1879 from putting the choice to the accused at the beginning of the case.

The Agricultural Credits Acts.

THE passing of the Agricultural Credits Act, 1932, which deals with mortgages for securing loans to assist agriculture, serves to direct attention to the extent to which direct assistance to farmers is now being provided in the shape of State loans. The principle underlying this practice was first introduced by the Agricultural Credits Act of 1923, which gave power to the Public Works Loan Commissioners to lend money to what were termed "approved associations" on the security of mortgage to persons who had agreed to purchase lands between April, 1917, and June, 1921. This power was to be exercised for a period of five years only. The amount secured on the mortgage was not to exceed 75 per cent. of the value of the land as ascertained to the satisfaction of the Commissioners. By an "approved association" was meant an association not trading for profit or by its constitution or otherwise restricted in relation to the rate of interest on loan capital and the distribution of profits amongst its members

so as to comply with regulations made in that behalf by the Treasury.

In addition to that, the Statute of 1923 directed the Minister of Transport to take such steps as were practicable to promote the formation or extension of agricultural credit societies, that is to say, societies approved by the Minister and registered under the Industrial and Provident Societies Act, 1893, having for their object, or one of their objects, the making of advances to members of the society repayable within a period not exceeding five years for such agricultural purposes as may be approved by the Minister. To enable the foregoing to be carried out some adjustments in the Improvement of Land Act, 1864, Settled Lands Act, 1882 to 1922, and the Law of Property Act, 1922, were necessary and these were enumerated in s. 3. Five years later came the Agricultural Credits Act, 1928, which introduced an entirely new method for providing agricultural credits in the shape of a "loan company" to deal with long-term loans, and also a new scheme to facilitate the borrowing of money on the security of farming stock and other agricultural assets. This obviated any necessity for an extension of the work of the Public Works Loan Commissioners.

The Agricultural Credits Act, 1928, is divided into two parts —the one relating to long-term and the other relating to short-term credits. The scheme by which a public company was formed to be provided with public funds with which the company was to make loans for agricultural purposes on favourable terms embodied a very interesting experiment in State assistance. The details of the scheme are too lengthy to be set out here, but they are embodied in Pt. I of the Act and can there be read and understood without difficulty. It is sufficient to say that in due course a company was registered in the name of the "Agricultural Mortgage Corporation Limited" under the auspices of the Bank of England and the other leading banks of the country. The debentures of this company are authorised trustee investments and the security they obtain is in the form of mortgage so arranged that the loan "*shall in no case exceed two-thirds of the estimated value of the mortgaged property at the time of the loan, and that the loans shall be repayable by equal yearly or half-yearly instalments of capital and interest spread over a period not exceeding sixty years*," except in special circumstances. The total amount authorised by Parliament for the purposes of this Act is not to exceed in the whole the sum of £812,500. The cost of the administration of the company is payable out of moneys provided by Parliament.

It is in connection with the provisions of Pt. I of the Statute of 1928 that the short amending Act of 1932 has been passed. Apparently it was discovered that the provisions of the Act of 1928 were in conflict with accepted rules of equity. Consequently s. 2 of the new statute is worded as follows:—

> "Notwithstanding any rule of equity to the contrary a provision in a mortgage requiring the loan secured thereby to be repaid by such instalments of capital and interest as are specified in paragraph (*c*) of sub-sect. (3) of sect. 2 of the principal Act" (viz., the clause italicised above) "shall not be treated as being invalid by reason only that the mortgage is thereby rendered irredeemable for the period during which the instalments are payable."

In addition, new provisions are made for dealing with mortgages where land is held in trust, pursuant to s. 71 of the Settled Land Act, 1925, or under the Law of Property Act, 1925, or the Administration of Estates Act, 1925, or otherwise. These provisions will be found set out fully and clearly in s. 3. It is only necessary to add that this series of statutes will in future be known as "the Agricultural Credits Acts, 1928-1932"—the former being the "principal Act" and the Statute of 1923 having become inoperative when the Statute of 1928 was passed to take its place.

Mr. Robert Weston Cracroft, barrister-at-law, of Ladbroke-square, W., left £14,887, with net personalty £11,773.

Privity of Contract between Principal and Sub-Agent.

THE importance of ascertaining whether privity of contract has been established between a principal and sub-agent probably needs no emphasis. In commercial circles, a sub-agent is frequently employed for the sake of convenience, and the decision is vital to his legal relations with his principal, inasmuch as neither can be fixed with contractual liability unless privity exists.

There is, as a general rule, no privity of contract between a principal and a sub-agent. Wright, J., in *Calico Printers' Association* v. *Barclays Bank and The Anglo-Palestine Co., Ltd.*, 170 L.T. 469 (affirmed by the Court of Appeal on the 29th January, 1931), held that, though there might be cases where privity of contract between a principal and a sub-agent might be established, there was no general principle to that effect in English law. Thesiger, L.J., delivering the judgment of the Court of Appeal, in *De Bussche* v. *Alt* (1877), 8 Ch. D. 286, expressed himself as follows: "As a general rule no doubt the maxim '*delegatus non potest delegare*' applies so as to prevent an agent from establishing the relationship of principal and agent between his own principal and a third person; but this maxim when analysed merely imports that an agent cannot, without authority from his principal, devolve upon another obligations to the principal which he has undertaken personally to fulfil; and that, inasmuch as confidence in the particular person employed is at the root of the contract of agency, such authority cannot be implied as an ordinary incident of the contract."

This general rule has, however, no application when an agent exercises an authority to create privity between his principal and a sub-agent. The contract between an agent and his principal may expressly authorise the creation of privity, in which case there is no difficulty. On the other hand, such authority may arise by implication, for, as Thesiger, L.J., said in *De Bussche* v. *Alt*, "... the exigencies of business do from time to time render necessary the carrying out of the instructions of a principal by a person other than the agent originally instructed for the purpose, and where that is the case, the reason of the thing requires that the rule should be relaxed, so as, on the one hand, to enable the agent to appoint what has been termed 'a sub-agent' or 'substitute' ...; and, on the other hand, to constitute, in the interests and for the protection of the principal, a direct privity of contract between him and such substitute."

It is clear, then, that an agent must have the authority, express or implied, of his principal in order to create privity between his principal and a sub-agent. From certain *dicta* of Mathew, L.J., in *Powell & Thomas* v. *Evan Jones & Co.* [1905] 1 K.B. 11, one might assume that such authority is to be implied in every case where an agent—

> (1) finds that he cannot conveniently carry out the contract himself, and
>
> (2) with the knowledge of his principal, transfers the work to another.

Mathew, L.J., said: "It frequently happens in matters of business of this kind that an agent, who is employed to render services for a principal, finds that he is not in a position to render those services himself, and, with the knowledge of his principal, he applies to another person, who may have greater facilities for carrying the transaction through. I think that the ordinary course of business in such a case as this is that the last-mentioned person takes the position of agent to the principal. It would be difficult in such cases to suppose that the principal would assent to the conduct of the business in which he was interested being transferred to a person who did not, in carrying it out, undertake the obligations of an agent towards him. As a matter of sound business it would generally be necessary that such should be the obligation."

It is submitted that this decision is questionable on two grounds: (1) that it confuses knowledge of the employment

of a sub-agent with authority to create privity, and (2) that it is too general having regard to the principles laid down in *De Bussche* v. *Alt*.

The first point is dealt with in the judgment of Bramwell, L.J., in *New Zealand & Australian Land Co.* v. *Watson* (1881), 7 Q.B.D. 374. He said: "He (Field, J.) said the defendants were sub-agents, and Matthews & Thielman had authority to employ sub-agents, and no doubt he was quite right as to that, because these cargoes were to be sold in London, and Matthews & Thielman carried on business in Glasgow and not in London. Then he (Field, J.) said it was a case of a principal and agent, and a principal can intervene in a contract which his broker and agent has made, and can sue the party with whom it has been made; that is to say, if a man employs another to sell goods, and that other sells the goods in his own name, the principal may intervene and bring his action against the buyer. There is no doubt about that, and why? Because a broker or agent who is so employed is employed to make the contract between two principals and one of them may sue the other upon it. But in this case Matthews & Thielman at Glasgow were not employed to make a contract of brokerage between the plaintiffs and the defendants. It may have been no breach in their agreement with the plaintiffs to employ a sub-agent, but they had no authority to make a contract of agency between the two."

It is not enough, to establish privity, to show that the maxim "*delegatus non potest delegare*" does not apply. In *Calico Printers' Case*, no complaint was made in regard to the employment by the first defendants (the agents) of the second defendants (the sub-agents), and it may fairly be assumed that it was no breach by the first defendants of their contract with the plaintiffs (the principals), but Wright, J., decided that privity did not exist between the principals and the sub-agents. Further, authority to create privity, or, in the words of Bramwell, J., to "make a contract of agency," between a principal and a sub-agent will not be implied merely because the principal knows of, consents to or even authorises the employment of a sub-agent. The circumstances in which the court will imply an authority to create privity are enumerated by Thesiger, L.J., in *De Bussche* v. *Alt*. There he said: "We are of opinion that an authority to the effect referred to (to create privity) may and should be implied where, from the conduct of the parties to the original contract, the usage of trade, or the nature of the particular business which is the subject of agency, it may reasonably be presumed that the parties to the contract of agency originally intended that such authority should exist, or where, in the course of the employment, unforeseen emergencies arise which impose upon the agent the necessity of employing a substitute; and that when such authority exists, and is duly executed, privity of contract arises between the principal and the sub-agent, and the latter becomes as responsible to the former for the due discharge of the duties which his employment casts upon him, as if he had been appointed agent by the principal himself."

Coming to the actual decisions in the cases referred to herein, it is to be observed that in *De Bussche* v. *Alt* and *Powell and Thomas* v. *Evan Jones & Co.*, it was held that there was privity between the principals and the sub-agents, while in *New Zealand Co.* v. *Watson* and *Calico Printers' Case*, the contrary view prevailed. To appreciate the value and extent of these decisions it is necessary to set out as shortly as possible the facts of each.

(1) *De Bussche* v. *Alt*.

The plaintiff consigned a ship to A in China for sale, fixing a minimum price. A employed the defendant in Japan to sell the ship with the same instructions, and *this was done with the knowledge and consent of the plaintiff*. After attempts to sell, the defendant himself took the ship for the minimum price, and, about the same time, resold her at an increased price. The plaintiff was not informed that the defendant had purchased the ship himself, or that he had resold her, until after the transactions. The plaintiff filed a bill in Chancery to compel the defendant to account for the profit on the resale. It was held that the relation of principal and agent was established between the plaintiff and defendant and existed at the time of purchase and resale by the defendant.

(2) *Powell & Thomas* v. *Evan Jones & Co.*

Agents, employed for commission to procure an advance of money, employed for that purpose, *with the assent of the principals*, a sub-agent, on the basis that he should share the commission. The sub-agent was aware that the agents were acting for their principals. He succeeded in procuring the advance from a company, and, without the knowledge of the agents or the principals, received from the company a commission for introducing the business. It was held that there was evidence that the contractual relation of principal and agent had been established between the principals and the sub-agent.

(3) *New Zealand Co.* v. *Watson*.

The plaintiffs were in the habit of shipping wheat from New Zealand to England for sale on the London market, taking bills of lading which made the wheat deliverable to themselves in London, and endorsing these bills to M & T, merchants and factors in Glasgow, with instructions to sell in London; M & T having no house or agency in London, were in the habit of endorsing these bills to the defendants for the purpose of their selling the wheat. When sales were effected M & T delivered account sales to the plaintiffs, deducting a *del credere* commission, whilst the terms upon which the defendants were employed by M & T were different, being a factorage and not a *del credere* commission. *The plaintiffs knew that the sales* effected for them by M & T *were made by brokers employed by M & T*, but they were in no way parties to the particular contracts of sale, nor were their names disclosed thereon. It was held that there was no privity of contract.

(4) *Calico Printers' Association* v. *Barclays Bank* and *The Anglo-Palestine Co., Ltd.*

A, on behalf of his firm at Beyrout, was a customer of the plaintiffs and had been financed by the bank. The bank, which had advanced against shipments, and had collected the proceeds at Beyrout, withdrew facilities, and A obtained credit from the plaintiffs. The plaintiffs then held the documents and were financed by the bank. For some years and at all material times, the bank acted merely as agents for collection, and the plaintiffs remained owners of the goods until the buyers at B took delivery. The bank had not a branch at B, but employed the company (the second defendants), which had been nominated by A, a practice followed for some years. A used to forward to the bank a form signed to the order of the plaintiffs, and in their turn the plaintiffs used to fill in a similar form accompanied by the documents, with instructions to collect the bills specified. In the margin under the heading "Instructions" the following appeared: "Documents to be surrendered against payment: if goods are not taken up, please do your best on our behalf to warehouse and insure them against fire." The bank passed on the documents to the company under a memorandum in the following terms: "Documentary drafts for collection and remittance of proceeds by sight draft . . . Surrender documents on payment. If refused, warehouse and insure goods. If unpaid *sans frais* advise by mail." The company used not to present documents for acceptance, but sent a notice to the consignee to take up the documents *sans retard*, and received an acknowledgment. The goods remained at the customs warehouse, uninsured. This happened to the goods in question when a fire destroyed them. It had been customary to give time, and make other concessions, to the consignee owing to the latter's difficulties in disposing of the

goods or providing finance, and it was known that this kind of delay was likely to happen to the goods in question. For the plaintiffs it was argued that the circumstances were such that privity of contract had been created, *inasmuch as the employment of the sub-agent was in the known course of business.* Wright, J., did not accept this contention and held that privity had not been established.

These cases indicate the folly of an attempt to lay down hard and fast rules, for there does not appear to be any clear line of demarcation, on the known facts, between any of them. Thesiger, L.J., in *De Bussche* v. *Alt* enunciated the general principles to be considered in determining whether authority to create privity is to be implied in a contract between principal and agent. But the decision in any particular case must depend largely upon its peculiar circumstances.

The conclusions to be drawn from the four cases considered herein may, it is submitted, be stated as follows :—

(1) There is no general principle of law, that, when a sub-agent is employed, privity of contract is established between him and the principal : *De Bussche* v. *Alt ; Calico Printers' Case.*

(2) Privity is established when an agent has express or implied authority from his principal and exercises it : *De Bussche* v. *Alt.*

(3) Such authority must be authority to create privity between principal and sub-agent, and not merely knowledge of or consent to the employment of a sub-agent : *New Zealand Co.* v. *Watson.* But such knowledge or consent, when coupled with other circumstances, may afford evidence that authority to create privity was intended by the parties to the original contract.

(4) Such authority may be implied in the circumstances referred to in *De Bussche* v. *Alt* by Thesiger, L.J. The tests to be applied are :—

(*a*) Looking at (1) the conduct of the parties to the original contract, (2) the usage of trade, or (3) the nature of the particular business, is it a reasonable implication that the parties to the original contract intended that such authority should exist ?

(*b*) Has some unforeseen emergency arisen which necessitates the employment of a sub-agent ?

In conclusion, it is to be observed that sub-agents may be divided into three classes :—

(1) Those employed without the consent, express or implied, of the principal, by whose acts the principal is not bound ;

(2) Those employed with the consent, express or implied, of the principal, but between whom and the principal there is no privy of contract ;

(3) Those employed with the principal's consent, express or implied, and between whom and the principal privity exists.

It is only in the third case that the relationship of principal and agent is established between the principal and the sub-agent.

Costs.

ADMIRALTY DIVISION.

A few further points in connection with Admiralty costs are worthy of notice.

In the first place, the provisions of the Judicature (Consolidation) Act, 1925, should be borne in mind. Section 33 (1) deals with the question of costs in Admiralty actions, and sub-s. (*a*) provides that if, in any claim for salvage services, the plaintiff recovers less than £300, then he is not entitled to any costs of the proceedings unless the court or judge certifies that the action was fit to be tried otherwise than summarily. Sub-section (*b*) further provides that if in any claim relating to the hire of a ship or the carriage of goods on ships less than £20 is recovered, then the plaintiff will not be entitled to any costs, unless the court or judge certifies that there was sufficient reason for bringing the action ; whilst if less than £300 is recovered, then costs will be recoverable only on the county court scale unless the court or judge certifies that there was sufficient reason for bringing the action in the High Court.

The court will readily give costs on the High Court scale where it can be shown that the plaintiffs have acted reasonably : see *The Saltburn* [1892] P. 333, where the plaintiffs recovered £265, and the court granted costs on the High Court scale on the ground that it was reasonable to bring the action in the High Court having regard to the size of the vessels and the length of time the hearing lasted. Again, in the case of *The Bengal* (1869), 3 Ad. & Ecc. 14, it was regarded as reasonable and proper to have brought the action in the High Court since a commission had to be issued abroad to obtain evidence, and this could not have been done in the county court. Reference may also be made to the case of the *Emden*, 23 T.L.R. 546, where the court exercised its discretion and gave the plaintiffs costs on the High Court scale, although the amount recovered was less than £300.

It should be observed though that in the case of the *Asia* (1890), Asp. Mar. Cases 25, where the plaintiffs recovered only £218 and asked for the costs of the action and reference without showing any special circumstances which warranted their bringing the action in the High Court, the learned judge refused to accede to their request.

As a matter of practice, where a salvage action is settled for a sum within the county court limit, the plaintiff must apply to the judge for an order that his costs shall be taxed on the High Court scale. In all other Admiralty actions costs will be given to the plaintiff on the High Court scale unless the defendant applies to the court for an order that only the county court scale shall apply.

After the question of liability for a collision has been decided in an Admiralty action, there remains the question of assessing the damages to be awarded, and this is left to the Registrar of the Admiralty Court. The costs of the reference are treated as the costs of a separate action and do not follow the order as to costs in respect of the determination of liability : see *The Consett*, 5 P.D. 77.

The registrar has unfettered discretion to award the costs of the reference in whatever manner he thinks fit, and should make an order in regard thereto in his report : see Or. 56, r. 8. The court will not interfere with the registrar's discretion unless he has acted on a wrong principle : see *The Neera*, 5 P.D. 118. Hence, it may be that the vessels have been found to blame in varying degrees, and the costs may be awarded in the same proportions, yet the registrar may award to each party the costs of the reference of their respective claims.

Where the registrar's report is silent as to costs then the parties ordinarily will bear their own costs, and the party desiring the costs must apply to the court by motion for an order.

Where a sum is offered in settlement of a claim before the claim is filed or the reference is set down and less than the offer is awarded by the registrar, then the registrar, in the exercise of his discretion, may deprive the claimant of his costs : see *The Reading* [1908] P. 162. It will be observed that this principle applies even where a mere offer is made and no sum is properly tendered.

On the other hand, even where a sum is tendered and refused and the registrar subsequently awards less than the amount tendered, then the plaintiffs may be awarded the costs of the reference if they acted reasonably in refusing the tender : see *The Creteforest* [1920] P. 111.

A tender does not include anything for costs unless it is clearly stated that it is made in respect of both claim and costs ; see *The William Symington*, 10 P.D. 1.

The Limits of the Restraint on Anticipation.

It is very seldom at the present time that a case comes before the courts, on comparatively simple facts, and not depending on the construction of a statute, on which there can be said to be no binding authority one way or the other, not even an authority just distinguishable on the facts. But that was certainly so in the case of *In re Horne's Settlement*, recently decided by Eve, J., and shortly to be reported in full. The point raised is of some interest. In 1925 a husband, who was a wealthy man, was divorced by his wife, and immediately after the decree was made absolute entered into a deed of covenant to pay an annuity of £3,000 a year to his former wife during their joint lives, free of income tax, with the usual proviso that whilst under any coverture the annuity should be for her separate use without power of anticipation. The settlement was expressed to be made in consideration of the wife's release of any claim to alimony or maintenance. A few days after the execution of the settlement the wife remarried an Italian subject and went to live in Italy. The annuity was paid for some time, but in 1929 a crash came and the former husband was adjudicated bankrupt. The trustees of the settlement and the annuitant presented a joint proof for the value of the annuity and other moneys and it was admitted.

In December, 1931, the trustee in bankruptcy paid a dividend of 6d. in the £, which in respect of the value of the annuity amounted to £1,043, little more than one-third of it. The question now arose, what were the trustees to do with the money? Could they safely pay it to the lady, or must they invest it in a new reduced annuity subject to a restraint on anticipation? A summons was taken out to decide it.

The case involves some consideration of the nature of that creation of equity, invented by Lord Thurlow, the married women's restraint upon anticipation: see *Brandon* v. *Robinson* (1811), 18 Ves. 429, where Lord Eldon distinguished it from the case of a protective trust in favour of a man, until he should become bankrupt. Before then a wife could dispose of property simply given to her for her separate use. It was not until *Miss Watson's Case*, says Lord Eldon, that these words "not to be paid by anticipation" were introduced. "I believe these were Lord Thurlow's own words, with whom I had much conversation upon it." And Lord Cottenham in *Tullett* v. *Armstrong* (1839), 4 My. & Cr. 390, in which the validity of the device was challenged, said: "The separate use and the prohibition of anticipation are equally creatures of equity, and equally inconsistent with the ordinary rules of property. The one is only a restriction and qualification of the other. The two must stand or fall together." But the doctrine does not mean more than that a married woman so restrained cannot by assignment, charge or otherwise anticipate her income; if she attempts to do so, that does not involve a forfeiture of her interest: *Re Wolstenholme* (1881), 43 L.T.752.

Such cases, then, as *In re Dempster* [1915] 1 Ch. 795, where an annuity was given by will with a gift over upon any assignment or charge and the estate was insufficient to provide the annuities named, were inapplicable; here there was no cesser or gift over. And see *In re Ross* [1900] 1 Ch. 162.

So long as the annuity existed, the wife could give no valid receipt for any payment in advance. But Eve, J., held, in a short judgment, that she was entitled to receive the whole dividend, though it represented part of the capital value, as there were already arrears of the annuity greatly exceeding the moneys in the hands of the trustees, and they were not bound to retain them. Upon proof for the capital value the annuity ceased to exist as such, and the moneys received were not income subject to a restraint but statutory compensation under the Bankruptcy Act, 1914, for loss of income. Had the dividend, however, been, for example, 10s. in the £, the trustees could not, it would seem, have paid more than the arrears of the annuity to the lady. As a rule a question of principle cannot depend on the quantum involved, but such a case as this must be an exception.

The nearest case to *In re Home's Settlement* is probably *In re Bown*, 27 Ch. D. 411, where the Court of Appeal held, reversing Kay, J., that a married woman was entitled to be paid a capital sum, the income of which, when she was in receipt of it, was subject to a restraint on anticipation.

Legal Maxims.

EX TURPI CAUSA NON ORITUR ACTIO.

It is a general proposition of law that an action which springs *ex turpi causa* cannot be maintained. The courts will not enforce an obligation which arises directly out of an unlawful transaction.

The term *turpis causa* is comprehensive and includes not only transactions which transgress a positive law of this country, but also those which are contrary to public policy, e.g., contracts in restraint of trade or for an immoral purpose. "Nor can any distinction be made between an illegal and an immoral purpose; the rule which is applicable to the matter is, *Ex turpi causa non oritur actio*, and whether it is an immoral or an illegal purpose in which the plaintiff has participated it comes equally within the terms of that maxim, and the effect is the same; no cause of action can arise out of one or the other": per Pollock, C.B., in *Pearce* v. *Brooks* (1866), L.R. 1 Ex. 213, at p. 218.

The maxim is not limited to cases where the transaction is illegal on the face of it. "The maxim clearly is not limited to actions to enforce contracts which by their terms bind the parties to do that which is prohibited and illegal. It extends to contracts which by their terms are not illegal but which arise out of an illegal transaction. In other words, it applies not only where the contract is on its face illegal, but also where the contract is opposed to public policy as arising out of an illegal transaction": per Vaughan Williams, L.J., in *Gordon* v. *Chief Commissioner of Metropolitan Police* [1910] 2 K.B. 1080, at p. 1087.

An agreement perfectly innocent in itself, e.g., for the hire of a brougham, will be vitiated if, to the plaintiff's knowledge, it is intended to further an unlawful purpose. Thus, in *Pearce* v. *Brooks*, the plaintiffs sued a prostitute for the hire of a brougham. They knew her to be a prostitute, and supplied the brougham with the knowledge that it would be, as in fact it was, used by her to ply her trade. It was held that the plaintiffs could not recover. A similar decision was reached in *Upfill* v. *Wright* [1910] 1 K.B. 506, where a flat was let for an immoral purpose.

In such cases the knowledge of the *turpis causa* is the decisive factor. But it should be observed that, where the transaction is not on its face illegal, the illegality and the plaintiff's knowledge of it must be proved. The law does not presume illegality.

The maxim is not even limited to actions founded on illegal contracts. An action for recovery of property may be defeated by it. Vaughan Williams, L.J., in *Gordon's Case*, at p. 1090, said: "An action to recover property will not be defeated by the application of the principle . . . unless it is an action to recover some specific thing such as could be recovered in an action of trover or detinue. The thing, the subject of the action, must have been directly acquired through the medium of a transaction which was fraudulent or illegal."

In *Gordon's Case* the plaintiff deposited in a house, which was occupied by his employee, a sum of money, the proceeds of street betting. The police entered the house on a warrant and seized a number of betting slips and the money. The plaintiff and the employee were prosecuted for using the house as a gaming house. The employee was convicted but the

plaintiff was acquitted. The plaintiff brought an action to recover the money. The defence was that the money belonged to the employee, and the plaintiff, in rebutting this defence, disclosed the fact that he had obtained the money by street betting. The trial judge held that the maxim applied and that the plaintiff could not recover, but the Court of Appeal reversed this decision.

Buckley, L.J., at p. 1098, said: '"Lord Mansfield in *Holman* v. *Johnson*, 1 Cowp. 341, at p. 343, said: '*Ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.' But what is the cause of action in the present case? The plaintiff had the property and the possession. His cause of action is exhaustively stated by saying that he sues the defendant for having deprived him of the possession of his property. The defendant seeks to say, 'True, it is your property, but it ought not to have been your property; you ought not to have got it by or in betting transactions.' That is a matter which forms no part of the cause of action. If the property is taken from the plaintiff on that ground, it is taken by confiscation . . . It may be that the plaintiff never ought to have acquired that property, but, having acquired it, his cause of action to recover it from the person who deprives him of it arises only from the fact of deprivation."

The test, whether a cause of action springs *ex turpi causa*, was stated by Lord Dunedin in *Farmers' Mart Ltd.* v. *Milne* (1915), A.C. 106, at p. 113, as follows: "The test was laid down so long ago as 1816 in the case of *Simpson* v. *Bloss* (1816), 7 Taunt. 246, and the headnote there expresses it perfectly correctly: 'The test, whether a demand connected with an illegal transaction, is capable of being enforced at law, is whether the plaintiff requires any aid from the illegal transaction to establish his case.' The same thing was again said in the celebrated case of *Fivaz* v. *Nicholls* (1846), 2 C.B. 501, at p. 512. Tindall, C.J., says: 'I think that this case may be determined on the short ground that the plaintiff is unable to establish his claim as stated upon the record, without relying upon the illegal agreement originally entered into between himself and the defendant.'"

If the cause of action does arise *ex turpi causa*, the court ought not to countenance the suit. "No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him."

It follows from the foregoing observations that money paid under an illegal contract cannot as a general rule be recovered. "Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of a court to fetch it back again," per Wilmot, C.J., in *Collins* v. *Blantern*, 2 Wilson 341. But there are some exceptions to this rule, and they are:—

(*a*) where the parties are not *in pari delicto*, e.g., where the defendant has taken advantage of the plaintiff by fraud: see *Hughes* v. *Liverpool Friendly Society* [1916] 2 K.B. 482, and compare *Harse* v. *Pearl Life Assurance Co.* [1904] 1 K.B. 558;

(*b*) where money has been paid to a stakeholder, if reclaimed before he has paid it over: see *Hampden* v. *Walsh* (1876), 1 Q.B.D. 189;

(*c*) where the illegal purpose in respect of which the money has been paid has not been carried out in any material respect. But the law on this point is by no means satisfactory: see "Anson's Law of Contract," 16th Ed., p. 2[illegible] *et seq.*, and the cases there cited;

(*d*) where the plaintiff is a person of a class protected by a particular statute which renders the transaction illegal.

According to many authorities this maxim is the basis of the rule in *Merryweather* v. *Nixan*, viz., there is no contribution between joint tortfeasors in cases of wilful and conscious wrongdoing. This view is criticised in "Salmond's Law of Torts," 7th ed., p. 103, where the learned author says: "The reason alleged (for the rule) is the technical one that any such claim must be based on an implied contract between the wrongdoers, and that such a contract is necessarily illegal and void as being made in contemplation of the commission of an illegal act. But this reasoning is unconvincing; contribution between joint wrongdoers is no more based on a contract than is contribution between joint sureties. It is based on the principle of justice, that a burden which the law imposes on two men should not be borne wholly by one of them." On the other hand, it would seem to be as contrary to policy to allow a man to recover money paid in respect of his illegal act as it is to allow him to recover that which he has paid in consequence of his illegal contract.

Finally, the maxim was applied in the case of *Hegarty* v. *Shine* (1878), 14 Cox C.C. 124, where a woman sued her paramour for communicating to her a venereal disease. This case appears to be the only one in which the maxim has been expressly applied where the action is founded in tort.

It is quite impossible to give more than a brief outline of the various aspects of this maxim in so small a compass, but the foregoing remarks may serve to illustrate its comprehensive nature.

Mr. C. E. Barry.

It is our privilege to present with this issue a portrait of Mr. Charles Edward Barry, solicitor, who is senior partner in the firm of Messrs. Barry & Harris, of Bristol, and who has been elected President of The Law Society for 1932-33. Mr. Barry, who was born in Dublin, is the son of Mr. Henry Barry, a member of the Irish Bar, and grandson of Sir Matthew Barrington, Bart., solicitor, of Clenstal, County Limerick, and Dublin. He was educated at school in Dublin, and afterwards at Marlborough College, and having served his articles with Messrs. Tilleard, Godden & Holme, now Messrs. Godden, Holme & Ward, of Old Jewry, he was admitted a solicitor in August, 1881. For a short time he was in the office of Messrs. Bird, Peake & Collins, of Bedford Row, as clerk, but later he left London and went to Bristol, where in 1884 he joined the late Mr. Beckingham, succeeding to the practice on that gentleman's death in 1885. Mr. Barry has carried on the business since that year, being in partnership with the late Mr. F. J. Harris from 1887 until his death in 1920. His present partners are Mr. D. F. Harris, son of Mr. F. J. Harris, and Mr. A. V. Bridge. He has been a member of the Council of the Bristol Incorporated Law Society for many years and has twice been elected their President, the second time being on the occasion of The Law Society's visit to Bristol in 1910. The honorary degree of LL.D. was conferred on Mr. Barry by the University of Bristol on Tuesday last. Mr. Barry is keenly interested in the work of the Solicitors' Benevolent Association, of which he was Chairman in 1927. Largely as a result of his efforts the Association is supported by almost every solicitor in Bristol. During the war, Mr. Barry was Vice-Chairman of the Appeals Tribunal for Bristol. He is a member of the Council of the Bristol Chamber of Commerce, and was President of the Chamber in 1924. Mr. Barry has also been President of the Grateful Society, which is one of the Bristol charitable societies founded in memory of the late Edward Colston, a Bristol philanthropist, and he is also and has been for some years past a member of the Committee of the Bristol General Hospital.

Company Law and Practice.

CL.

THE EXAMINATION OF DIRECTORS IN A WINDING-UP.

Liquidators in the winding-up of companies are very much assisted in their task by the provisions of s. 214 and s. 216 of the Companies Act, 1929, which provide for the examination, both private and public, of directors and other persons for the purpose of obtaining information necessary to the liquidation. The examination may serve a two-fold purpose, for not only does it give the liquidator facilities for supplementing his documentary researches into the company's position, but it may well provide a director or other official of the company with an opportunity of explaining the meaning of some transaction in the company's books, which might be capable of a wrong construction.

Section 214, which is available in both compulsory and voluntary winding-up, provides for the private examination of any officer of the company, or any person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company. The court may examine him on oath, and may require him to reduce his answers to writing and to sign them. He must produce any papers and books in his power or custody relating to the company, but where he claims a lien on the books or papers the production is without prejudice to the lien. The liquidator does not file an affidavit in support of the application, as the whole object of the section is to enable such proceedings to be kept secret, but the application is supported by a written statement. The application by the liquidator is *ex parte*, and it will be sufficient for him to show a case of suspicion only. The court has to be reasonably satisfied that the person summoned is capable of giving the information required, and the object of the application, where the liquidator entertains suspicions only, and has no *primâ facie* case, may be merely to ascertain whether those suspicions are well founded or not. It will therefore be seen that under this section a total stranger to the company may be examined, so long as the court deems him capable of giving the information required, and it seems that the Court of Appeal will not interfere with the discretion of the judge making the order, unless it is an extreme case: *Re Gold Company*, 12 Ch. D. 77. There is also authority for the proposition that the court may order an examination of its own motion—see *Re Land Securities Co.* [1894] W.N. 91, where Vaughan Williams, J., expressed such an opinion in making a supervision order, and ordered the liquidator to make an investigation, and report whether such an examination ought to take place.

A witness who is summoned for examination under this section is summoned by summons and not by subpœna: and if, after being tendered a reasonable sum for his expenses, he does not arrive at the time appointed, the court may order him to be apprehended, unless he has some lawful excuse, which he has made known to the court at the time of its sitting, and leave has been granted by it. In lieu of an order for his apprehension being directed, a defaulting witness may be ordered to attend and to pay the costs occasioned by his default; if he again fails to attend he may be punished for contempt of court.

The application for examination may be made by a contributory or a creditor, but will not be granted to any such person unless strong grounds are shown. Instead of mere suspicion, a contributory who wishes to examine must show a *primâ facie* case, and he must give notice to the liquidator of his intention to apply, because if the liquidator is willing to undertake the proceedings, the court will usually entrust him with their conduct in preference to a contributory. In every case the court has a discretion in refusing or making the order, and may allow part of the examination to be made by the liquidator and part by a creditor or contributory, or may enforce an undertaking that the information obtained by a contributory shall not be disclosed. It should be remembered that the examination is a "proceeding in the Supreme Court," and that therefore the court has a discretion as to costs, and may make the party applying for the examination pay the costs.

As I have already mentioned, the object of this section is to provide for the examination of directors and other persons in private, and the examination is usually before the registrar. In this case neither the public nor creditors and contributories will be allowed to be present unless specifically authorised by an order of the court. Rule 72 (1) of the Companies (Winding-up) Rules, 1929, expressly authorises the Official Receiver to attend all such examinations either in person, or by a subordinate, or by counsel or solicitors, and the same rule, sub-s. (2), provides that notes of the depositions of a person examined under s. 214 shall not be open to inspection by creditors or contributories unless the court shall so direct.

Finally, it is important to note in connection with this section that the order to examine will not be granted as a matter of right, even on a liquidator's application, for in all cases it is a matter for the discretion of the judge. So, where an applicant is merely seeking information for his own ends, such as where he has an action against the company, and full interrogatories have already been answered, the court will not make an order for examination.

Turning our attention now to s. 216, the first observations I would make with regard to it are that it is only available in a compulsory winding-up in England, and that proceedings under it against directors, secretaries or other persons are, more or less, penal in character. Section 182 provides for the making by the Official Receiver in a compulsory winding-up of a preliminary report on the company's affairs and position, which he is required to furnish to the court, and then, if he thinks fit, to furnish a further report. If this further report has been made, then the machinery of s. 216 becomes available, provided that such report states that, in the opinion of the Official Receiver, some fraud has been committed in the promotion or formation of the company by any person, or by a director or any other officer of the company in relation to the company since its formation. If such a report is furnished by the Official Receiver the court may, after considering it, direct that the person, director, or officer against whom the accusation is made be publicly examined. By sub-s. (9) an examination under this section may be held before any judge of a county court, or before any officer of the Supreme Court, being an official referee, master or registrar in bankruptcy; in the High Court, in practice, examinations under this section are held before the registrar. It is necessary that the report of the Official Receiver shall allege fraud as we have seen, but there is authority for saying that the word "fraud" need not be used, so long as the report makes out a *primâ facie* case of fraud against the individual charged: see *Ex parte Barnes* [1896] A.C. 146. In that case Lord Halsbury, L.C., pointed out that it is not enough that the report indicates a finding that fraud must have existed somewhere, but that there must be an individual person incriminated.

The examination under this section is on oath, and the court may put such questions to the person examined as it thinks fit. He must answer all questions which the court may allow to be put to him whether they tend to incriminate him or not, and if he refuses to answer, the registrar or other person examining him may report such refusal to the judge, and he is then in the same position as if he had made default before the judge in the first instance. The person examined has the right to be furnished at his own cost before the examination with a copy of the Official Receiver's report, and he may appear by solicitors or counsel, who will be entitled to examine him with the object of explaining or qualifying any answers given by him

in the examination. In strong cases a person who has been exculpated from the charges made against him in the examination may apply to the court for his costs out of the assets of the company. On an application for exculpation, it is the duty of the Official Receiver to attend, and call the attention of the court to any matters which appear to him to be relevant. Notes of the examination must be taken down in writing (in practice in shorthand), and must be read over to the person examined, who must sign them, and they may thereafter be used as evidence against him, and are open to the inspection of any creditor or contributory at all reasonable times.

(*To be continued.*)

A Conveyancer's Diary.

Assignment of Life Estate by Trustee in Bankruptcy of Tenant for Life to Remainderman: S.L.A., 1925, s. 105.

A CASE of some interest and importance on the construction of s. 105 of the S.L.A., 1925, is *Re Shawdon Estates Settlement* [1930] 2 Ch. 1.

That section (as amended by the L.P. (Amendment) A., 1926) reads:—

"(1) When the estate or interest of a tenant for life under the settlement has been or is absolutely assured with intent to extinguish the same, either before or after the commencement of this Act, to the person next entitled in remainder or reversion under the settlement, then the statutory tenant for life under this Act shall in reference to the property affected by the assurance and notwithstanding the provisions of the last preceding section, cease to be exercisable by him, and the statutory powers shall thenceforth become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured and to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life.

"This sub-section applies whether or not any term of years or charge intervenes or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance.

"This sub-section does not prejudice anything done by the tenant for life before the commencement of this Act in exercise of any power operating under the S.L.A., 1882 to 1890, or, unless the assurance provides to the contrary, operate to accelerate any such intervening term of years or charge as aforesaid.

"(2) In this section 'assurance' means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely or jointly in two or more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and 'assured' has a corresponding meaning."

Before turning to *Re Shawdon Estates Settlement* it may be as well to remind the reader that the "last preceding section," namely, s. 104, is that which provides, in effect, that the powers of a tenant for life are not capable of assignment or release and remain exercisable by the tenant for life after any assignment by operation of law or otherwise of his estate and interest; and that a contract not to exercise his powers is void; but where an assignment for value of the estate of the tenant for life was made before the commencement of the Act the section operates without prejudice to the rights of the assignee, and in that case the rights of the assignee are not to be affected without his consent, except that, unless the assignee is actually in possession of the settled land, his consent is not to be requisite for making of leases by the tenant for life provided the leases are at the best rent and in conformity with the Act, and except that the consent of the assignee is not required to an investment of capital money in authorised securities. Then there are provisions regarding assignments coming into operation after the commencement of the Act to the effect that the consent of an assignee for value shall not be required for the exercise of the statutory powers by the tenant for life, and that the assignee shall have the like estate or interest in the land, money or securities for the time being representing the land, money or securities comprised in the assignment as he had by virtue of the assignment in the last-mentioned land, money or securities.

With regard to the second paragraph of sub-s. (1) of s. 104, it may be mentioned that that provision was inserted to meet the decision in *Re Lord Wimborne and Browne* [1904] 1 Ch. 537, where it was held under s. 50 of the S.L.A., 1882 (the corresponding section to s. 104 in the Act of 1925), that where there were terms of years to secure charges intervening between the estate of the tenant for life and that of the remainderman the tenant for life retained the statutory powers although he had assigned his life estate to the remainderman.

Now we may consider *Re Shawdon Estates Settlement*.

The facts in that case were that by a settlement dated in 1902 and made between W. H. Pawson of the first part, V. M. Gaskell of the second part, and trustees of the third part (being a settlement made on the marriage of W. H. Pawson and V. M. Gaskell) certain freehold properties known as the Shawdon Estates were limited after the marriage was solemnised to the use of W. H. Pawson during his life, with remainder to uses for securing a jointure rent-charge to V. M. Gaskell (afterwards V. M. Shawdon) during her life and subject thereto to the use of the trustees for a term of 1,000 years for securing portions and subject to the said term to the first and other sons of the marriage successively, according to seniority in tail male with remainders over. The settlement contained certain powers of charging in the event of the re-marriage of W. H. Pawson after the death of V. M. Gaskell (which event happened) and other powers in extension of those conferred by the S.L.A.

The applicant, W. J. H. Pawson, was the eldest son of the marriage, and was born in 1902. The marriage had been dissolved, and both spouses had re-married.

In 1907 W. H. Pawson was adjudicated bankrupt, and A. C. Bourner was appointed trustee of his estate.

By a vesting deed dated in 1926 and made between the then trustees of the settlement of the one part, and W. H. Pawson of the other part, the trustees declared that all the property remaining subject to the limitations of the settlement was vested in W. H. Pawson in fee simple, and that he should stand possessed thereof upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held from time to time, that the trustees were the trustees of the settlement for the purposes of the S.L.A., 1925, and that additional or larger powers were conferred by the settlement in relation to the settled land.

In 1929 the applicant agreed with the trustee in bankruptcy of the tenant for life to purchase the life estate subject to incumbrances created by the tenant for life and by a conveyance, dated in that year, made between the said A. C. Bourner of the first part, the trustees of the second part and the applicant of the third part, the said Bourner in consideration of £4,000 paid to him by the applicant conveyed to the applicant all the settled property for the residue of the life of the said W. H. Pawson, with intent to extinguish the said life estate therein of the said W. H. Pawson, and so as to vest in the applicant the statutory powers of the said W. H. Pawson under s. 105 of the S.L.A., 1925, but subject to the mortgages therein specified and to any other incumbrances affecting the life estate, and the rights to which any incumbrancer would have been entitled if the powers conferred by the S.L.A., 1925, as amended, had remained exercisable by the said W. H. Pawson.

At about the same time a vesting deed was prepared for the purpose of enabling W. H. Pawson to vest the legal estate

in the settled property in the applicant in accordance with s. 7, sub-s. (4) of the S.L.A., 1925, but W. H. Pawson refused to execute the deed.

The summons was taken out by the applicant under s. 12 of the S.L.A., 1925, for a vesting order vesting the properties in the applicant for all the estate and interest therein of W. H. Pawson, subject to a charge by way of legal mortgage subsisting upon part of the land.

Eve, J., granted the application.

His lordship held that s. 105 was to be construed as an exception to the rule contained in s. 104 that the powers of a tenant for life were incapable of assignment or release. The wording of s. 105 was general and was not to be confined to the case of an assurance by the tenant for life. The assignee must be the person next entitled in remainder, but the assignor, the person entitled to express the "intent," might be anyone in whom the life estate was vested. There were no grounds for holding that a trustee in bankruptcy could not avail himself of the section and the applicant was, therefore, entitled to a vesting order.

On appeal the decision of Eve, J., was upheld.

Landlord and Tenant Notebook.

Covenants and Unexpected Changes in the Law.

Some statutes which are liable to affect the performance of covenants in leases specifically provide for modification of the rights of landlord and tenant; one might mention the statutes dealing with income tax, those dealing with licensing, and the Factory Acts, as examples. When specific provisions of this kind are omitted, it may become necessary to consider the position in the light of both the interpretation of the statute and the construction of the covenant; and then to apply the general principle stated by Lord Holt in *Brewster* v. *Kitchin* (1698), 1 Ld. Raym. 318: "For the difference, where an act of Parliament will amount to the repeal of a covenant, and where not, is this: where a man covenants not to do a thing which was lawful for him to do, and an Act of Parliament comes after and compels him to do it, there the Act repeals the covenant, and *vice versa*. But where a man covenants not to do a thing, which was unlawful at the time of the covenant, and afterwards an Act of Parliament makes it lawful, the Act does not repeal the covenant. So here, since the Act does not compel the tenant to deduct, the Act leaves the covenant in full force" —the covenant being one to pay taxes, and the new statute one imposing a tax not dissimilar, save in form, from those known at the date when the covenant was made.

It should be emphasised that the commercial doctrine of *vis major* does not apply to leases. Attempts have been made to get *Bailey* v. *De Crespigny* (1869), L.R., 4 Q.B. 180, recognised as an authority to the contrary. That was a case in which a tenant unsuccessfully complained of a breach of a covenant designed to preserve amenities, the breach being the erection of buildings (a railway station, etc.) on neighbouring land which had belonged to the defendant when, in 1840, he granted the lease and entered into the covenant, which mentioned himself and his assigns. But the assigns were a railway company who had bought under statutory powers, conferred in 1862, and it was held that the assignor was excused. What is important to observe, however, is the emphasis laid on the *ratio decidendi* of Hannen, J.'s, judgment by Lord Buckmaster in *Matthey* v. *Curling*, *infra*. Lord Buckmaster points out that the decision is really founded on the interpretation of the covenant; what mattered was, what did the parties contemplate when using the word "assign" when the lease was granted and accepted; the statute had created a class of assign whom the lessor could not bind and who was therefore outside that contemplation, and the covenant did not apply.

The problem was touched on in two cases which arose soon afterwards, *Jones* v. *Bone* (1870), L.R. 9 Eq. 674, and *Wadham* v. *Postmaster-General* (1871), L.R., 6 Q.B. 644. In the one the purchaser of a building plot complained of a breach, by the tenant of another purchaser, of a covenant against the carrying on of the business of an hotel or tavern keeper or publican or beershop keeper or seller by retail of wine, beer, spirits or spirituous liquors on the latter's premises. The covenant was in a deed entered into in 1854, when none but a few privileged persons was allowed to sell wine or spirits, for consumption off the premises, in smaller quantities than two gallons. In 1860 the Wine Licences and Refreshment Houses Act gave the defendant, a grocer, the right to take out a licence to sell wine in quart bottles, and in 1867 he did so, becoming an agent of Messrs. W. & A. Gilbey. The court held that the "new line of business" which had sprung up since the Act was passed was a modification of the old wine merchant's business, which was not a business prohibited by the covenant; the covenant was aimed at "a gin palace bar, or the like." In the other case the plaintiff was aggrieved by the sale of dog licences and the transaction of other Inland Revenue business at Clifton Post Office, which the defendant held of him under a 1,000-year lease, granted in 1852 with a covenant and condition that the premises should not be used for any other business than that of a post-office. The business complained of had been added to the functions of the department by recent statutes, but the court held that it was *ejusdem generis* and that the parties must be deemed to have expected alterations in those functions.

The modern decision of *Matthey* v. *Curling* [1922] 2 A.C. 180, concerned an ordinary repairing covenant and the Defence of the Realm Act, 1914, under which the premises had been taken over by the War Office and used for the housing of prisoners of war. The tenant's contention that he was excused by impossibility by operation of law might have succeeded in the Court of Appeal if he had brought evidence in the court below to support it, for two judges declined to assume that the occupation in itself made repairs impossible; but in the House of Lords Lord Buckmaster, in affirming their judgment, added that the statute did not in terms prohibit performance.

As an example of the effect of a covenant which actually contemplated new legislation, I may cite *Monro* v. *Burghclere* [1918] 1 K.B. 291, C.A., in which the tenant was under covenant to execute all works as are or may under or in pursuance of any Act or Acts of Parliament already passed or hereafter to be passed be directed or required to be by any local or public authority to be executed, etc. The lease was granted in 1903; in 1905 the London Building Acts (Amendment) Act, was passed; when, in 1915, more than half the premises were burned down, the landlord was, under that statute, put to an extra expense of £410 in installing escapes, etc., when re-building. The same statute provides for apportionment between landlord and tenant as may seem "just and equitable, . . . regard being had to the terms of any lease," and this was applied for; the court held that while there might be old leases in wide terms which ought to be disregarded accordingly, this covenant was clearly made in contemplation of a statute of this kind, and the landlord was entitled to recover from the tenant the whole amount less an amount which was to be borne by a sub-tenant of part of the building.

SURREY QUARTER SESSIONS.

Resignation of Chairman.

Mr. Cecil Whiteley, K.C., who is Chairman of both the County of London Sessions and the Surrey Quarter Sessions, announced at the opening of Surrey Sessions at Kingston-on-Thames last Monday, his pending retirement from the chairmanship of those sessions. He had held the position for eight years, he said, and it was with very great regret that he found it was impossible for him to continue it.

Our County Court Letter.

COSTUMIER'S LENGTH OF NOTICE.

In the recent case of *Sargent* v. *Charles Jordan Limited*, at Derby County Court, the claim was for salary and commission due to the manageress of a shop, following a wrongful dismissal. The plaintiff's case was that (1) following the introduction of a director's daughter (an ex-governess) as first saleswoman, she felt that her own position was precarious, and therefore made inquiries with a view to opening a business of her own, (2) the defendants, however, increased the plaintiff's salary to £4 15s. a week, with commission, and entered into a written agreement to retain her for three years and nine months, (3) nevertheless the plaintiff was dismissed at the end of eleven months, without any complaint in writing (as stipulated) and the business was sold to the first saleswoman. The defence was that the plaintiff allowed too much credit, and her gross profits were too low, but it was admitted that (*a*) the directors' wives obtained dresses at less than marked prices, (*b*) the business realised £900, plus £250 for fittings and fixtures. His Honour Judge Longson observed that the directors included a contractor, a hairdresser, a fruit dealer, a professor of music and a fish dealer, but their ignorance of the costume business did not excuse their attitude. Judgment was therefore given for the plaintiff for £65 and costs. Compare "Multiple Shop Manager's Length of Notice," in the "County Court Letter" in our issue of the 19th March, 1932 (76 Sol. J. 197).

THE LIABILITIES OF CLUB OFFICIALS.

In the recent case of *Arnott* v. *Jervis and Others*, at Lichfield County Court, the claim was for £14 10s. as money lent to a working men's club, which was registered under the Friendly Societies Acts. The plaintiff's case was that (*a*) having been appointed stewardess in 1926, she subscribed £12 towards a bowling green in 1927; (*b*) one year's interest (at 5 per cent.) was paid to May, 1928, since when the principal and interest were in arrear; (*c*) the defendants were personally liable, either as committee-men or members of the club. The evidence was that (1) the plaintiff had given £12 to her husband, who put the money on the table at a committee meeting, so that the actual recipient was unknown; (2) the three defendants had also subscribed £12 each. His Honour Judge Ruegg, K.C., observed that a club has no legal existence, even if registered under the Friendly Societies Acts, whereby the assets became vested in trustees. A particular member, while liable for things he ordered personally, did not become liable merely through his membership of the committee. Judgment was therefore given for the defendants, with costs. See *Wise* v. *Perpetual Trustee Company Limited* [1903] A.C., at p. 149.

Delay may nevertheless imperil an otherwise good defence, as in the recent case of *Pritchett* v. *Kingsman* at Northleach County Court. The claim was for £9 17s. for carriage of goods, but the defendant contended that he was not personally liable, as he was merely a director of Western Counties Hotels Limited, for whom the debt was incurred. The evidence was that (*a*) the company was formed in 1926 (the shareholders being the defendant and his wife), but that a receiver was appointed in August, 1932; (*b*) a previous action had been settled in 1930 on the payment of £10 by the defendant, who had not then disputed his personal liability, although the account related to the same hotel. His Honour Judge Kennedy, K.C., observed that the defence was inconsistent with the previous transactions between the same parties, and judgment was therefore given for the plaintiff, with costs.

BOROUGH OF STAMFORD.

The next General Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Thursday, the 27th instant at 11 o'clock in the forenoon.

In Lighter Vein.

The Week's Anniversary.

Sir John Bayley died at Vine House, near Sevenoaks, on the 10th October, 1841. If he had been a witty judge, his memory would probably have come down to us with a pleasant aroma of chestnuts, but as he was only the best common law judge of his day he is practically forgotten. He became a justice of the King's Bench in 1808, transferred to the Court of Exchequer in 1830 and retired in 1834. His clear intellect and quick comprehension gave him such a natural aptitude for his judicial functions that a French observer summed him up with the remark: "*Il s'amuse à juger!*" In particular his knowledge of case law was remarkable and with the aid of seven little red notebooks which he always carried with him he could turn up any reported case at a moment's notice. His kindness, dignity, patience and impartiality made him a favourite with Bench, Bar and litigants alike. In addition, he was profoundly religious and published an edition of the "Book of Common Prayer."

Assault.

A defendant at the Guildhall Police-court recently learnt with surprise that an "assault" is not synonymous in law with a striking. He had pushed his way past a ticket collector after an excess fare dispute, and it cost him a three guineas' fine. The circumstances recall a rather quaint case in "Clayton's Reports": "Kerriford, an attorney, was plaintiff in battery and the case was thus: He was walking in the market (as attorneys do too much) and the defendant and he had some angry words there, upon which the defendant did press to go by him and in going by reason of the throng of people there he jostled the plaintiff and for this he brought this action in which, if an assault only be proved, it is insufficient and holden it was no assault for the touching him or jostle was to another end, namely, to get by him in the throng and not to beat him."

Defences on Credit.

"I am afraid we cannot give you one on credit," said Mr. Justice Charles at the Old Bailey recently to an impecunious applicant for a dock brief. In most cases the precaution is probably salutary, though guineas are not the only means of rewarding the services of counsel. The centenary of Sir Walter Scott's death recalls how strangely he was feed in his first case. Having successfully defended a burglar—on credit apparently—he was informed by his grateful but unmoneyed client that as he could not pay him a fee he would give him two professional secrets of the housebreaking profession. The first was that a yelping terrier inside a house was harder to deal with than a big dog outside. The second was that no lock was so troublesome to pick as a rusty one. This remarkable form of payment in kind was commemorated by the learned author in the following couplet—

"Yelping terrier, rusty key,
Was Walter Scott's first Jeddart fee."

Technical advice was a favourite form of payment at that period. Thus, a cattle-stealing client once rewarded O'Connell with the secret of how to pick the best beasts on a dark night. "When you go to steal a cow and wish av coorse to take the best, be sure to take her that's on the outside. The wakest craturs always make for the ditch for shelter."

Bomb Perils.

Such perils as the recent bomb outrages at the houses of the Chief Justice of the Chicago Criminal Court and of Judge Thayer of Sacco and Vanzetti fame, are inevitably incidental to open warfare between criminals and the law. Our own judges have probably not gone in grave danger of life and limb since the dynamite scare at the time of the Fenian outrages. The judges who presided at the resulting

trials had special police protection. The unpleasant situation was enlivened by a gleam of humour during a great dinner given by the Mayor of Bristol to Her Majesty's Judges of Assize and to the Bar. In the middle of the banquet the gas light suddenly failed and the room was in absolute darkness till candles were brought. The returning illumination revealed one of my Lords the Queen's Justices emerging from under the table where he had taken refuge in expectation of a Fenian bomb.

Correspondence.

The New Divorce Rules.

Sir,—With reference to the new Divorce Rules specified in THE SOLICITORS' JOURNAL of the 13th August, we do not find that any provision is made for the certificate of service which at present is always endorsed on the copy petition now about to be dispensed with from the 12th October.

Strand, W.C.2, T. H. HORWOOD & CO.
22nd September.

A Warning.

Sir,—Recently we advertised the proposed sale by auction of a property in Gloucestershire, and received a letter requesting that particulars be sent to the writer, whose name, according to the subscribed signature, was the same as that of a famous jockey. The letter concluded with the words: "Can you also recommend a firm of stock and share brokers?"

Having a faint recollection of reading in a newspaper, about a year ago, an account of the prosecution and conviction of a man who had made an enquiry similar to that quoted above, we handed the letter to the police with a request to investigate. We have now got the report of the police, which is to the effect that our correspondent's real name is quite different from that given in his letter, and that he has recently undergone twelve months' imprisonment for obtaining money by false pretences.

We understand that, on obtaining a reply from solicitors, he shows it to the brokers recommended, and, on the confidence thereby created, is accepted by them as a client. If the ensuing transaction shows a profit, he collects it; a loss is left for the brokers to bear.

Burnley, CREEKE & SON.
27th September.

Ownership of Money in Gas Meter.

Sir,—With reference to your leaderette in last week's issue, I venture to submit that the opinion therein is correct except that the offence is larceny and not larceny as a bailee. In "Stephen's Digest of the Criminal Law," at pp. 326, 327, it is pointed out that a bank manager who appropriates to his own use money he has previously received and put into the bank safe is guilty of larceny, whereas a cashier who appropriates bank money before it is placed in the bank drawer or till is guilty of embezzlement.

Money placed by a customer into a gas company's meter is reduced into the possession of the company in the same way as fish caught in the North Sea by a master or skipper having full charge and control of a fishing smack, of which the prosecutors were owners, was reduced into the owners' possession when placed in the hold, as in *R.* v. *Mallinson* (1902), 20 Cox, 204, 86 L.T. 600.

A guarantee of the safety of the contents of a gas meter does not affect the case.

Sheffield, F. B. DINGLE.
24th September.

Assaulted Railwayman's Claim for Damages.

Sir,—Referring to the note under the above heading in your issue of the 24th inst., attention might be drawn to the fact that the case of a common assault is one of the exceptions to the general rule that anyone may lay an information or complaint for a criminal offence. Section 42 of the Offences Against the Person Act, 1861, makes it a condition to the justices having jurisdiction that the complaint should be made by the party aggrieved or by someone on his behalf (which means someone authorised by him, *Nicholson* v. *Booth* (1888), 57 L.J. M.C. 43).

The railwayman in the case referred to must, it would seem, have been himself the person responsible for his inability to recover damages.

The course which the National Union of Railwaymen should have taken should have been to inform all their members that they had alternative remedies for assaults, either by civil action for damages or by criminal prosecution, but that the latter proceeding would be a bar to the former.

Norwich, ERNEST I. WATSON.
28th September.

Distress for Rates.

Sir,—Can any of your readers inform me whether the procedure of a distress for rates is exactly the same, or similar, to that of a distress for rent?

For instance, a forcible entry through a closed door, or window, is illegal in respect of a distress for rent; is it so in the matter of a distress for rates? I cannot find any decided cases on the point.

London, E.C. LEX.
29th September.

Costs of Lessor's Solicitors.

Sir,—For many years past I have thought that the rule or custom by which a lessee has to pay the costs of the lessor's solicitors as well as his own is an anachronism and unfair, as by far the greater part of a lease is for the benefit of the lessor, and all that a lessee wants could be written on a sheet of paper coupled with possession being given to him, and I think it would be fairer that each party should bear their own costs. As a result of correspondence on the subject with the Council of The Law Society a special committee has been appointed to deal with the matter after the Long Vacation. I believe the bulk of the profession, at any rate in London, share my view, and I shall be much obliged if you will allow me the hospitality of your columns to ask any solicitor who has not heard from me personally on the subject, and who agrees with the proposal, to write me to that effect, and I will see that his concurrence is notified to The Law Society.

Lincoln's Inn, W.C.2. N. L. GARRETT.
30th September.

RE-OPENING OF THE LAW COURTS.

The Lord Chancellor will receive the Lord Mayor-Elect at the House of Lords on Wednesday, 12th October, at 11 a.m. On the same day at 11.45, there will be a special service in Westminster Abbey. Places will be reserved for the judges, county court judges, King's counsel, and officers of the Supreme Court who wish to attend. The Dean will receive the judges at the West Door, and the service will be over about 12.15. King's counsel, officers, and other judicial and official persons will enter by Dean's Yard, while the Junior Bar will enter by Jerusalem Chamber. After the service the Lord Chancellor, together with His Majesty's judges, will proceed direct to the Law Courts from Poets' Corner.

WESTMINSTER CATHEDRAL.

A Votive Mass of the Holy Ghost (The Red Mass) will be said on Wednesday, 12th October, 1932 (the opening of the Michaelmas Law Term), at 11.30 a.m.

Counsel will robe in the Chapter Room at the Cathedral. The seats behind Counsel will be reserved for Solicitors.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Rent Restriction Acts—Reversioner Himself Tenant—A Yearly Tenant.

Q. 2582. My client has recently become the tenant of a tied hotel, the tenancy being a yearly one determinable on three months' notice. The brewery company themselves only bought the property about two months ago. Forming part of the premises are six cottages, one or two shops and some garages, which are all occupied by tenants, but held subject to yearly tenancies. In the agreement with the brewery company my client covenants to pay a yearly rent of £200, and in the deed it is shown that this amount is made up of different sums in respect of the hotel, cottages, shops and garages. Actually the total of the rents at present payable in respect of the above is £200. The cottages are controlled, but the rents in four cases out of six are the same as they were on 3rd August, 1914, the remaining two houses having increased from £6 to £6 10s. per annum and £12 to £14 per annum respectively. All external repairs are done by the brewery company, but the tenants of the cottages do their own internal repairs, and pay their own rates. Will you please advise on the following points:—

(1) Is my client the landlord of the cottages for purposes of the Rent Restriction Acts?

(2) What increase of rent (if any) can be made in respect of the cottages?

A. (1) A yearly tenant may be the legal reversioner in respect of a tenancy or lease created by himself (*Curtis* v. *Wheeler* (1830), M. & M. 493; *Oxley* v. *James* (1844), 13 M. & W. 214), and by analogy may become reversioner by a letting from year to year by the freehold reversioner. It does not seem to be quite clear whether s. 141 (2) applies to the property let by parol as possibly the cottages are. It is considered that to obviate any possible technical objection the tenant of the brewery company should wait until the cottage tenants have attorned by payment of rent when it will be quite clear that they cannot then dispute the fact that he is the "landlord." It is recognised that this delay may postpone the increase of rent for one rent "term." Of course, in respect of any tenant who is not already a statutory tenant, the rent can only be increased after due notice to quit or a notice under Rent Restrictions (Notices of Increase) Act, 1923, having the effect of a notice to quit.

(2) Fifteen per cent. of the net rent under s. 2 (1) (*c*), and a proportion of 25 per cent. under (*d*) to be fixed by agreement or county court order prior to the notice. Probably something in the neighbourhood of 15 per cent. If the internal repairs are done by the tenants voluntarily and not under agreement, the landlord may claim the whole 25 per cent. What effect (if any) s. 1 of the Housing Act, 1925, has on the question is not known. If part of any cottage is sub-let as a dwelling-house within the Act an additional 5 per cent. on the rent of the part sub-let (Rent Restrictions Act, 1923, s. 7).

Trustees' Varying Investments.

Q. 2583. A, B and C are the trustees under a will under which A is entitled to the income of the trust estate for life. The will provides for the investment of trust moneys in trustee securities. B and C and their brokers recommend a change of one of the trustee investments which is now standing at a premium and investing the proceeds in another trustee security now quoted at under par, but which is likely to rise a few points within the next few months. The change of investment however will mean a slight reduction in A's income. A's attitude is that it is no advantage to her to appreciate the capital fund, and that all she is concerned about is to get as much income as possible. Is it not the duty of trustees to try and appreciate the capital value of the trust estate, and can the majority trustees in a matter of this sort force the issue?

A. If the will is a personalty settlement as is assumed from the question, i.e., a settlement of personal estate, or of the proceeds of sale of real estate directed to be sold, the trustees have a discretion to vary investments subject to any prohibition contained in the will, or any consent directed to be obtained (T.A., 1925, s. 1 (1) and s. 3). If such discretion is exercised, having in view the interests of all parties, it will not be interfered with. (See as to its exercise, *Hume* v. *Lopes* [1891] 1 Ch. 423). If the will creates a real settlement, and the money is capital money under S.L.A., 1925, the life tenant may give directions for investment (S.L.A., s. 75).

Intestacy—Nephews and Nieces Taking—Whether *per stirpes* or *per capita*.

Q. 2584. D died intestate in July, 1931, leaving only personal estate and no brother or sister or other relatives him surviving, other than several nephews and nieces the children of deceased brothers and sisters. Do such nephews and nieces take *per stirpes* or share equally?

A. The nephews and nieces will take *per stirpes*. Whenever the distribution involves a class of relatives other than the issue of the deceased the divisible estate has to be held upon trusts corresponding to the statutory trusts for issue, minus the hotchpot provisions: A. of E.A., 1925, s. 47 (3). These statutory trusts are on the basis of a division *per stirpes*: A. of E.A., 1925, s. 47 (1).

Schedule A Tax—Sub-leases at Improved Rents.

Q. 2585. A leases two shops to B at £100, tenant doing inside repairs. B sub-leases one shop to C at £150, and the other to D at £120, tenants doing inside. The gross total assessment of the two shops (now assessed separately) is very high, and after deduction of the usual repairs allowance the net assessment is more than the total rent payable to B. C and D deduct tax on their rent only, and pay the difference themselves. B has deducted tax on £100 rent payable by him, but A claims that he should have the benefit of the repairs allowance and only pay on £80, leaving B to pay the difference. Having regard to the words "all sums allowed by the Commissioners being first deducted" in Sched. A, Income Tax Act, 1918, No. VIII, 1 and 4, can B, C and D deduct on the full rent, or on rent less repairs allowance? It would appear that the word "thereof" which precedes the words quoted refers to the "payment" (i.e., the "annual sum" or rent). Also, in the event of (say) sub-tenant C omitting to deduct his tax from next rent, could B voluntarily allow deduction from a future quarter's rent, and if not, can B still deduct in full against A because the rent of one shop is more than the £100 rent? What course should B adopt in such circumstances?

A. In every case where the assessment is higher than the rent deduction may be made of tax on the amount of the rent. In the case cited A is in the position of an ordinary

ground landlord to whom r. 4 applies. We doubt if in strict law B can deduct more than is actually *legally* deductible from the sub-rents, but there is no authority on the point, and one could certainly not advise A to litigate on the question raised of a deduction voluntarily allowed by B from a subsequent rent. B should deduct income tax every quarter or half-year that the head rent is payable.

Quit Rent—Extinguishment—Steward's Compensation.

Q. 2586. An owner of land formerly copyhold and also of freehold land subject to quit rents wishes to extinguish the manorial incidents. The quit rents in respect of the freehold land at twenty years' purchase form the greater part of the compensation to the lord of the manor. Is it correct for the compensation to the steward of the manor under 14th Sched., L.P.A., 1922, to be based on the total amount payable to the lord (including the twenty years' purchase of quit rents on freehold land), or should it be based only on the amount of the compensation payable to the lord in respect of land formerly copyhold ? In the 14th Sched., L.P.A., 1922, the scale is in respect of " fine arbitrary cases " or " fine certain cases," and it is suggested that the scale is not applicable to quit rents on freehold land.

A. The answer to this question will depend upon the nature of the quit rent. If, as appears to be the case, it is manorial, the twenty years' purchase of the rent must be taken into consideration in fixing the compensation to the steward. The L.P.A., 1922, provides for the extinguishment of the manorial incidents saved by s. 128 (2) of that Act (which include quit rents) as affecting land other than copyhold (*ibid.*, s. 138 (1)), and the quit rent is thus subject to Pt. II of the 13th Sched. to that Act (para. 11). If, on the other hand, the rent is not manorial its extinguishment by way of redemption would fall to be dealt with under s. 191 of L.P.A., 1925.

Tithe Rent-charge—Covenant to Pay by Lessee of Part—Redemption—Liability of Lessee.

Q. 2587. A is the freeholder of certain land laid out as a building estate and leased one plot to B for a term of ninety-nine years with the usual covenant by B to discharge all rates, taxes, outgoings and assessments. There is a tithe on the whole land payable to the Ecclesiastical Commissioners. B has always paid his annual proportion of this tithe. A has since sold the reversion in several of the neighbouring plots, and one of these plot owners has commenced compulsory proceedings for the redemption of the tithe. By whom is the proportion assessed on the plot leased by B payable ? Is it payable by A as freeholder, or by B under the covenant contained in the lease ?

A. By s. 1 (1) of the Tithe Act, 1891, tithe rent-charge issuing out of lands is payable by the owner of the lands, notwithstanding any contract between him and the occupier, and any contract made between the occupier and owner of land after the passing of the Act is made void. It would therefore appear that unless the lease of the plot to B was entered into prior to 26th March, 1891, there is no liability on B to pay this tithe in any event. Therefore the land due on the proportion assessed on the plot leased by B is payable by A as freeholder.

Licensing — Ordinary Removal — Removal of Full Licence to Beerhouse—Giving up Beerhouse Licence—Monopoly Value—Compensation.

Q. 2588. A firm of brewers own a fully licensed house, X, and a house, Y, which has only a beer licence. The tenants hold the licences. The brewers wish to give up the licence on X and have it transferred to Y so making Y a fully licensed house. It seems that this can be done by an application for an ordinary removal at the general annual licensing sessions, which must be confirmed by the confirming authority. Kindly confirm this or state how the matter should be otherwise carried out. If our view is correct, we assume the tenant of Y will be the person to make the application. What will be the position as to payment of " monopoly value " or compensation for giving up the beerhouse licence ?

A. We agree that the procedure should be by way of ordinary removal: ss. 24 and 26 of the Licensing (Consolidation) Act, 1910. The person to apply is the person who desires to be the holder of the licence when removed : s. 26 (1). *R.* v. *Drinkwater, ex parte Wincott* [1905] 2 K.B. 469, governs the position as to monopoly value, and the justices cannot impose a condition as to such value. No compensation will be payable in respect of giving up the beerhouse licence. There will be no refusal of a renewal within s. 20 of the Act.

Mortgage—Transfer to Nominees of Mortgagor—Consent of Mesne Incumbrancers.

Q. 2589. A mortgagor, A, is arranging a transfer of his mortgage of £3,000. I am acting for the first mortgagee of the property comprised in the mortgage. Notices of three mortgages subsequent to the first mortgage have been received by the mortgagee. I am not acting for the proposed transferees and cannot say whether or not these are nominees of the mortgagor, but I am inclined to think that they are not. In view of the statement contained on p. 291 of vol. I of " Wolstenholme and Cherry's Conveyancing Statutes " that a mortgagee cannot safely transfer his mortgage to the mortgagor or to his nominee without the consent of the mesne incumbrancers of which he has notice (*Re Magneta Time Co., Ltd.* [1915] 84 L.J. Ch. 814), what course ought I as the mortgagee's solicitor to take either in the direction of (1) satisfying myself that the proposed transferees are not nominees of the mortgagor, or (2) obtaining the consent of the mesne incumbrancers—if this is necessary—to the proposed transfer ?

A. As the mortgagor is arranging the transfer, surely the transferees must of necessity be his nominees. The mortgagor's right to require a transfer rests upon L.P.A., 1925, s. 95. It is assumed that the mortgagee is not and has not been in possession, in which case the mortgagor could not require a transfer (L.P.A., 1925, s. 95 (3)), and the mortgagee should not execute one save under an order of court : *Hall* v. *Heward* (1886), 32 Ch. D. 430. The answers to the specific questions are :—

(1) The transferees are the nominees of the mortgagor, in our opinion.

(2) The consent of the mesne incumbrancers is certainly necessary on the authority of *Re Magneta Time Co., Ltd. : Molden* v. *The Company* [1915] 84 L.J. Ch. 814 ; [1915] W.N. 318. We do not think that it is for the first mortgagee's solicitor to obtain these consents, but rather for the mortgagor's solicitor. It is incumbent upon both the mortgagee and the transferees to see that such consents are obtained, in the case of the mortgagee on the authority of the case cited, and in the case of the transferees with a view to obviating the possibility of difficult questions arising in the future. We do not think that the mesne incumbrancers need be parties to the transfer, it will be sufficient if their written consents are obtained.

Trust for Sale in Will—Sole Executrix and Trustee also Life Tenant—Necessity for Assent and Appointment of Additional Trustee.

Q. 2590. A testator died recently and appointed his wife the sole executor and trustee of his will. He bequeathed everything to her upon trust for sale with power of postponement, upon trust for her to retain the income for life with remainder to his children absolutely. The testator left leasehold properties. The probability is that the executor and trustee will retain such leaseholds and that they will still be held by her at her death. Is it necessary and/or advisable for her to (*a*) assent to the vesting of such leasehold properties in herself, and (*b*) appoint a second trustee ? Which

transaction should be effected first? I have perused the answers to the questions on p. 102 of "Further Points in Practice," but they do not cover my question.

A. Provided the widow takes care not to die intestate (so as to obviate the necessity in the future of a grant *de bonis non* in the estate of her late husband), and provided that she is not likely to want to deal with the property in any way outside her proper powers as personal representative, there is no necessity to have an assent to the trust for sale and an appointment of an additional trustee. In view of the risk of her intestate death we advise an assent, but the appointment of an additional trustee can, unless and until capital money is involved, be dispensed with. Should it be decided to have an assent and an appointment, the order in which these two documents are executed is immaterial, seeing that but the two documents are needed, and the trusts are already fully established, though pending assent the properties are not fully subject thereto. It is possibly more logical to follow the assent by the appointment.

Reviews.

The British Year Book of International Law, 1932. Thirteenth year of issue. Royal 8vo. pp. vi and (with Index) 250. London: Humphrey Milford, Oxford University Press. 16s. net.

The Year Book is a sort of atmospheric chart of international relations, from which one can gauge the strength and direction of new currents in the affairs of the nations *vis-à-vis* one another. Thus "a Legal Footnote to the story of German Reparations," though saying that it is "impossible to compose their epitaph," not only points to the abolition which has now occurred, but indicates how certain questions such as that of the equality of states, and the necessity of arbitral or judicial machinery in international transactions of long duration and considerable complexity, are being affected by the treatment of the reparations problem.

New questions are always emerging in the relations of states, and old ones assuming a new importance. The article on "British-American Policy and the Right of Fluvial Navigation" shows the large part Great Britain and the United States have taken in shaping the law governing international rivers, and the review of Professor Smith's book on the "Economic Uses of International Rivers" exhibits the new and urgent aspect the problem is taking on owing to the development of water power on an immense scale, and the increase in other subsidiary uses of the rainfall by the population of the world grouped in overgrown cities.

There are other useful articles in the volume and the usual valuable appendices giving decisions of international and of national tribunals involving points of international law. An exhaustive bibliography for 1931 completes the volume.

The Victims of Fraud. A Plea for a New Law. With Notes on the American Law. By EUSTACE J. HARVEY. 1932. Demy 8vo. pp. xxx (with Index of Cases) and (with Index) 304. London: Humphrey Milford, Oxford University Press. 24s. net.

This is an important work, and one which deserves to be carefully read and studied. It is a closely-reasoned analysis of the chief frauds committed with goods and negotiable securities and the resulting contests between innocent persons. The author sets out to demonstrate—and in our view the task is accomplished effectively—how thoroughly unsatisfactory is the present state of the law both in its conception and in its administration as governed by that conception. The volume opens with an introductory chapter showing how, when a fraud has been committed, e.g., by the fraudulent person stealing what belongs to A then selling or pledging it to B, the conviction and punishment of the offender in the criminal court is often followed by a contest in the civil courts as to which of the two innocent parties, A the true owner or B the purchaser, is to bear the loss. In such a case justice would require that this should be decided by finding out which of the two had the more to do with the fraud. In practice, however, the author finds that justice is not so administered, and he sets out to analyse the causes which operate in law and in equity to bring about this state of things. In the course of the volume, theft, fraud by agents, fraud touching bearer securities, fraudulent pledging, and the numerous frauds connected with bills of exchange, promissory notes and cheques are examined—as is also forgery. Some 150 reported cases are cited and the proposed new methods of dealing with each branch of the subject are explained, interesting contrasts being made between the laws of America and our own. Incidentally the author outlines a broad scheme for the codification of the law on this subject. That in course of time this very desirable object will be attained seems likely; and for that reason the volume before us may be regarded as an important and permanent contribution to law reform.

The Children and Young Persons Acts, 1908–1932. Edited by GEOFFREY G. RAPHAEL, of the Inner Temple, ENID ROSSER, of Lincoln's Inn, and WILFRID FORDHAM, of the Inner Temple, Barristers-at-Law. 1932. Demy 8vo. pp. xxvi and (with Index) 335. London: Eyre & Spottiswoode (Publishers), Ltd. 21s. net.

This volume is the joint work of three members of the South-Eastern Circuit. It contains the complete text of the Children and Young Persons Act, 1932, the Children Act, 1908, as amended by subsequent legislation, and other relevant Statutes and Statutory Rules and Orders, the whole being very fully annotated with tables of cases and Statutes and a complete and comprehensive index. Since the Children Act became law in 1908, the principles on which it was based have been tested for practically a quarter of a century and have stood the test very well. This is shown by the fact that the Statute of 1932 makes no fundamental changes in the law, but is intended to enlarge the foundation upon which the earlier structure was built, and in so doing to extend the jurisdiction of the juvenile courts which have been functioning with results that can only be described as, in the main, wholly satisfactory. The separation of these courts from the ordinary petty sessional tribunals has called to the magisterial bench a new type of lay justice, and the enlargement of the jurisdiction of those courts up to the age of seventeen years will give still further scope for social service, especially by women. It will also call for some degree of specialisation on the part of advocates in both branches of the legal profession; and the volume before us provides an excellent work embodying all that is necessary in the way of statutory references together with a set of notes providing safe guidance on points of difficulty and numerous cross references which add very much to the value of the work generally. We do not hesitate to predict a large demand for this volume. In addition to the Acts specifically mentioned the text is set out of all necessary sections of a large number of Statutes material to the issues arising in dealing with children and young persons, e.g., the Criminal Law Amendment Act, the Probation of Offenders Act, the Education Act, 1921, and the Guardianship of Infants Act, 1925.

Books Received.

English Justice. By "SOLICITOR." 1932. Demy 8vo. pp. xii and 249. London: George Routledge & Sons, Ltd. 10s. 6d. net.

The Road to the Law. By DUDLEY CAMMETT LUNT, Member of the Bar of Delaware and of Maine. 1932. Demy 8vo. pp. xiv and (with Index) 281. London: McGraw-Hill Publishing Co., Ltd. 10s. 6d. net.

The Advocates' Chronicle. No. 1. 1932. Madras: The Advocates' Chronicle. Subscription, £1 per annum. Single copy, 1s. 6d.

The Bombay Law Journal. Vol. X. No. 4. September, 1932. Bombay: The Union Press. Annual subscription, Rs.13.

Murders and Murder Trials, 1812-1912. By H. M. Walbrook. 1932. Crown 8vo. pp. xi and (with Index) 366 London: Constable & Co., Ltd. 7s. 6d. net.

Studies in the History of the Admiralty and Prize Courts. By E. S. Roscoe, Registrar of the Admiralty and Prize Courts. 1932. Demy 8vo. pp. vii and (with Index) 84. London: Stevens & Sons, Ltd. 5s. net.

Pridmore and Scott's Guide to the Preparation, Delivery and Taxation of Bills of Costs. Thirteenth Edition. 1932. By A. W. Porter, Principal Clerk, Supreme Court Taxing Office, Royal Courts of Justice, and F. G. Wortham, Principal Clerk, Taxing Office, High Court of Justice in Bankruptcy. Medium 8vo. pp. xlvii and (with Index) 1303. London: Waterlow and Sons, Ltd. £3 3s. net.

Local Authority Finance Accounts and Auditing. Second Edition. 1932. By J. H. Burton. In Two Volumes. Demy 8vo. Vol. I, pp. xvi and 599. Vol. II, pp. viii and (with Index) 600—1075. London: Gee & Co. (Publishers), Ltd. 45s. net.

Plan Drawing for the Police. By James D. Cape, P.A.S.I., Chartered Surveyor. 1932. Crown 8vo. pp. (with Index) 53. London: Sir Isaac Pitman & Sons, Ltd. 2s. net.

A Monthly Bulletin. Vol. 2. No. 9. September, 1932. London: The Fellowship of Freedom and Reform. Price 2d.

The Howard Journal. Vol. III. No. 3. 1932. London: The Howard League for Penal Reform. Price 1s.

Thou Shalt Not Kill. Vol. I. No. 3. October, 1932. London: The National Council for the Abolition of the Death Penalty. Price 2d.

The Malayan Law Journal. Vol. I. No. 3. September, 1932. Singapore: B. A. Mallal. Annual Subscription, $12. postage extra. Single copy, $1.25.

Town and Country Planning Act, 1932. By The Hon. Dougall Meston, of Lincoln's Inn and South Eastern Circuit, Barrister-at-Law. 1932. Royal 8vo. pp. (with Index) 136. London: Sweet & Maxwell, Ltd.; Stevens and Sons, Ltd. 7s. 6d. net.

Cockle's Cases and Statutes on the Law of Evidence. Fifth Edition. 1932. By Charles M. Cahn, B.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. lv and (with Index) 583. London: Sweet & Maxwell, Ltd. 18s. 6d. net.

Steele's Guide to the Final and Honours Examinations of The Law Society. Third Edition. 1932. By E. A. Steele, LL.B. (Lond.), Solicitor, and J. M. McLusky, LL.B. (Lond.), Solicitor, Principals of the Halifax Law Classes. Demy 8vo. pp. viii and 96. London: Sweet & Maxwell, Ltd. 5s. net.

Constitutional Law and Legal History in a Nutshell. By Marston Garsia, B.A., of Merton College, Oxford, the Middle Temple and the South Eastern Circuit, Barrister-at-Law. Third Edition. 1932. Demy 8vo. pp. xvi and 138. London: Sweet & Maxwell, Ltd. 4s. net.

Lloyd's List Law Reports. Digest No. 4. Volumes 31-40. Edited by Charles W. Muir, of the Inner Temple and the North Eastern Circuit, Barrister-at-Law, and R. Unwin Davis, of Gray's Inn and the Western Circuit, Barrister-at-Law. 1932. Crown 4to. pp. xix and 222. London: The Corporation of Lloyd's. £2 2s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

Notes of Cases.

Court of Appeal.

Watson's Trustees *v.* **Wiggins (Inspector of Taxes).**
Lord Hanworth, M.R., Slesser, L.J., Romer, L.J. 25th July.

Income Tax—Covenant to pay Annuity—Settlement on trust for Infant—Power of Revocation—Infant's Income—Finance Act, 1922 (12 & 13 Geo. V, c. 17), s. 20, sub-s. (1).

By a deed of settlement dated 5th March, 1930, a father covenanted with trustees that he would during the joint lives of himself and his son, an infant under the age of fourteen years, pay to the trustees an annuity of £350 by equal quarterly instalments. The settlement provided that the trustees should stand possessed of the annuity in trust for the son with the same power during his minority to apply the annuity for his maintenance, education and benefit as they would have if the annuity were income of property vested in the trustees upon trust for him for an absolute interest. They were to accumulate and invest any income not so applied by them, and had power to revert to the accumulations at any time and apply them as though they were current income. The settlement also contained a power for the settlor to revoke it at any time with the consent of any one of the three trustees and two other named persons. The settlor paid to the trustees the instalments of the annuity during the year ending 5th April, 1931, and deducted income tax; and the trustees, on behalf of the son, claimed relief and repayment of the tax, claiming that the instalments were his income and not income of the settlor. The claim was opposed by the inspector of taxes and was disallowed by the General Commissioners. On a case stated by the Commissioners, Rowlatt, J., said that since the power of revocation had not at present been exercised it could not be said that the income was payable for a less period than the life of the son, and he could not hold that the case came within the provision of clause (*c*) of the Finance Act, 1922, s. 22 (1), by which income "payable to or applicable for the benefit of a child" of the settlor "for some period less than the life of the child" was ". . . if and so long as the child" was "an infant and unmarried . . . to be deemed . . . to be the income" of the settlor. He therefore reversed the decision of the Commissioners. On appeal by the inspector of taxes the Court of Appeal upheld the decision of Rowlatt, J., on similar grounds.

Lord Hanworth, M.R., referred to a decision of the Court of Session in Scotland (*Levitt* v. *Inland Revenue Commissioners* (1932), Session Notes 61), not yet reported elsewhere, but published as Tax leaflet No. 639.

Romer, J., pointed out that para. (*a*) of the same subsection did not treat income which a person might make his own by the exercise of a power of revocation as being his income unless the power could be exercised by him without the consent of any other person, and therefore did not apply to this case.

Counsel: *The Attorney-General, J. H. Stamp* and *R. P. Hills,* for the appellant; *Latter,* K.C., *Gavin Symonds,* K.C., and *Cyril King,* for the respondent.

Solicitors: *Solicitor of Inland Revenue,* for the appellant; *Shirley Woolmer & Co.,* for the respondent.

[Reported by J. F. Iselin, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Jones *v.* **Treasury Solicitor.**
Bateson, J. 25th June.

Probate—Two Wills—Revocation—Construction of Dispositions—Illegitimate Testatrix—Administration *cum testamento annexo*—Grant to Treasury Solicitor on partial Intestacy—Costs.

In this probate action the plaintiff, Miss C. L. L. J., propounded two wills made in 1916 and 1931 respectively of

Mrs. M. C. S. a widow who died on 26th January, 1931, aged eighty-six, leaving an estate of about £15,000. The testatrix, who was the illegitimate daughter of a German father and an English mother, was educated in Germany, and although she came to England when she was eighteen, throughout her life maintained her German associations. She thought in German, but wrote good English. In the course of time she conducted a successful girls' school at Westgate. By a will dated 7th March, 1916, she appointed the plaintiff co-executrix and residuary legatee. Four years before her death the testatrix retired, giving the school to the plaintiff. On 24th January, 1931, the testatrix being about to undergo an operation made a subsequent will stating, *inter alia*, that the former will was cancelled. The subsequent will contained no specific residuary clause, and an appointment of executors was inoperative because their names followed the attestation clause. Miss C. L. L. J. as plaintiff asked that the two wills might be admitted to probate together. The defendant, the Treasury Solicitor, claimed letters of administration on a partial intestacy, contending that the later will revoked the earlier and did not dispose of the residue. Mrs. M. O. intervened, claiming letters of administration as residuary legatee under the later will, on the construction of the words of a bequest "the rest of my money in the bank."

Bateson, J., in giving judgment, said that the later will started with the words: "This is my last will, the former one being cancelled." The word "cancelled" had been substituted for the word "*ungultig*," which had been scratched out. "*Ungultig*" meant null and void, invalid or of no value. The word "cancelled" meant that she revoked the earlier will, especially in view of the essential differences in the bequests in the two wills. When a later will was so inconsistent or contradictory in substance with an earlier will, a later will would revoke the earlier. When the testatrix had deliberately left out of the second will the legatees in the earlier will, it would be strange that they should be put back again by implication through the admission of the earlier will. The plea of the intervener that the words relied upon by her disposed of the residue in her favour failed. In the result the will of January, 1931, would be pronounced for with a declaration that the residue was not disposed of, a grant being made to the Treasury Solicitor of letters of administration with the will annexed; the costs of all parties to come out of the estate..

Counsel: *Van den Berg*, K.C., and *H. W. Barnard*, for the plaintiff; *T. Bucknill*, for the Treasury Solicitor; *Hon. Victor Russell*, for the intervener; *C. L. Beddington*, for a party cited.

Solicitors: *J. D. Langton & Passmore; Treasury Solicitor; A. M. Oppenheimer; Theodore Goddard & Co.*

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

Neal *v.* **Denston.** Langton, J. 12th July.

Probate—Will—Issue of Due Execution—Printed Will Form — Correctly filled-in Attestation Clause Unreliable Evidence of Attesting Witnesses against the Will—Principle of *Omnia Præsumuntur* Applied—Acknowledgment of Signature—Costs.

In this probate suit, which raised solely the issue of due execution, the court applied the doctrine of *omnia præsumuntur rite esse acta* in somewhat special circumstances. The testator, W.F.D., died on 12th August, 1931, leaving a will dated 30th November, 1929, disposing of an estate worth about £1,300. The plaintiff, as executor, propounded the will. The defendants, the widow and two sons, put the plaintiff to proof of due execution, alleging that the two attesting witnesses were not present together when the testator signed the will or acknowledged his signature, nor when they signed their names. For many years the testator had been living apart and estranged from his wife. For eight years he lived with another woman until she died in 1929. In 1922 he and she had made mutual wills in each other's favour. In November, 1929, the plaintiff, a friend, wrote down the deceased's testamentary wishes on a printed will form which contained detailed instructions. The testator disposed of his property to friends "in appreciation of their kindness." The testator said he was going to ask his two "young governors" at his place of employment to witness the will. He had a little office there, and the will was witnessed by two workmen, the "young governors" not being available. The day after the funeral one of the testator's sons lodged a caveat and statements were made by the attesting witnesses to the effect that they did not see the testator sign the will and were not present together when they signed the will. Both of the pages on which the dispositive words were written had at the foot printed a proper attestation clause stating that the testator and witnesses were all three present at the same time. Each attestation clause had been signed by the testator and the two witnesses with their names in the proper places.

Langton, J., in the course of delivering a considered judgment, said that the evidence of the attesting witnesses was completely unsatisfactory. The testator left the bulk of the property to friends of the woman with whom he had lived on terms of great affection, and in so doing followed out an earnestly expressed intention. His view was that she had been instrumental in making the savings whereby he was enabled to have property to leave. The evidence showed that the testator had said to the executor and another friend "I did not get the two witnesses I intended as I could not get them together, but I got two of the workmen of the firm." The will itself was drawn with care, and the testator seemed to have been a man by common account of reasonable intelligence who had some acquaintance with matters concerning wills, and there was his intention of getting two people together to witness the will. On the other hand, the evidence was that three people could not get into the testator's small partitioned office and two people would have great difficulty in getting in at once. But there was nothing improbable in the supposition that a man who was impressed with the fact that the witnesses should be there together should have called over to him two men and together shown them, or acknowledged in some way within the proper area of the law, his signature, and asked them one by one to sit down at his stool and sign. The memory of one of the attesting witnesses was completely at sea as to the whole of the transaction, and his evidence must be ruled out in any controversial matter. The other attesting witness's evidence could not be trusted. There was no evidence upon which the court could rely as to the manner of execution, so it was entitled to apply the principle *omnia præsumuntur rite esse acta*. The probabilities were that the will was duly executed. The will would be pronounced for in solemn form. By consent the defendants were awarded £50 costs out of the estate.

Counsel: *William Latey*, for the plaintiff; *L. F. Potts*, for the defendants.

Solicitors: *Latey & Latey; A. A. Lewis*, Woodford.

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

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Obituary.

Mr. L. F. HAWKINS.

Mr. Lawrence Frederick Hawkins, solicitor, of Bournemouth, died at his home there on Sunday, the 2nd October, at the age of fifty-seven. He was admitted a solicitor in 1898, and was a member of The Law Society and the Bournemouth and District Law Society. He had practised in Bournemouth since 1909, and in recent years he was joined by his son. Mr. Hawkins was a vice-president of the Southbourne Conservative Club, a member of the Bournemouth Yorkshire Society, and a member of the Southbourne Sports Club.

Mr. D. H. DUTHIE.

Mr. David Hutcheon Duthie, O.B.E., solicitor, a partner in the firm of Messrs. Carle, Duthie & Ferries, advocates, of Aberdeen, died at his home in Aberdeen on Sunday, the 2nd October, after a brief illness. He received his early education at Robert Gordon's Colleges, Aberdeen, and graduated M.A. at Aberdeen University in 1893, and B.L. in 1895. He started in practice two years later.

Rules and Orders.

THE COMPANIES (WINDING-UP) AMENDMENT (NO. 1) RULES, 1932, DATED SEPTEMBER 29, 1932, MADE PURSUANT TO SECTION 305 OF THE COMPANIES ACT, 1929 (19 & 20 GEO. 5, c. 23).

1. In Rule 189 of the Companies (Winding-Up) Rules, 1929,(*) the expression "Rule 10" shall be substituted for the expression "Rule 10B" and shall stand as part of the said Rule 189.

2. These Rules may be cited as the Companies (Winding-Up) Amendment (No. 1) Rules, 1932, and shall come into operation on the 1st day of October, 1932, and the Companies (Winding-Up) Rules, 1929, as amended,(†) shall have effect as further amended by these Rules.

Dated the 29th day of September, 1932.

I concur.

Sankey, C.
Walter Runciman,
President of the Board of Trade.

* S.R. & O. 1929 (No. 612), p. 208.
† *See* S.R. & O. 1929 (No. 1177), p. 349 and S.R. & O. 1931 (No. 70) p. 119.

THE BANKRUPTCY AMENDMENT (NO. 1) RULES, 1932, DATED SEPTEMBER 29, 1932, MADE PURSUANT TO SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5. c. 59).

1. The following paragraph shall be inserted in the Bankruptcy Rules, 1915,(*) as paragraph (3) of Rule 103:—

"(3) The total in any Bill of Costs of the costs and charges (as distinct from payments) prescribed by this Rule and either set out in Chapters I to VI inclusive of Part II of the Appendix, or referred to in paragraph I of Chapter VII (General Regulations) of Part II of the Appendix (including all Bills taxed pursuant to Rule 96) shall be increased, in respect of business done after the 30th day of April, 1918, as follows:—

(*a*) if done before the 1st day of January, 1920, by 20 per centum;

(*b*) if done after the 31st day of December, 1919, and before the 12th day of October, 1932, by 33⅓ per centum, and

(*c*) if done after the 11th day of October, 1932, by 25 per centum;

and such increase shall be allowed upon any taxation.

Provided—

(*a*) that this paragraph shall not apply to Bills carried in for taxation or delivered to the client sought to be charged therewith or to the party chargeable therewith, or to Bills taxed and certified or allowed, before the 15th day of July, 1918;

(*b*) that in respect of bills so carried in or delivered or taxed and certified or allowed after the 31st day of December, 1919, but before the 1st day of April, 1920, items therein relating to business done between those dates shall for the purposes of this paragraph be deemed to relate to business done before the 1st day of January, 1920; and

(*c*) that this paragraph shall not affect the power of the Court to fix a sum to be paid in lieu of taxed costs under Rule 96 (1)."

2. Rules 103A(†) and 103B(‡) are hereby revoked.

3. These Rules may be cited as the Bankruptcy Amendment (No. 1) Rules, 1932, and shall come into operation on the 1st day of October, 1932, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

Dated the 29th day of September, 1932.

I concur.

Sankey, C.
Walter Runciman,
President of the Board of Trade.

* S.R. & O. 1915 (No. 1824) I, p. 41. † S.R. & O. 1918 (No. 1055) I, p. 109
‡ S.R. & O. 1920 (No. 907) I, p. 194.

Societies.

Law Students' Debating Society.

AGENDA PAPER.

Tuesday, 11th October, 1932, at 7.30 p.m. (Chairman: Mr. H. J. Baxter.)

Motion: That Rule "69" be altered by adding after the words "at any time" the words "without leave of the chairman."—Mr. E. F. Iwi.

Motion: That Rule "75" be altered by adding after the words "at any time" the words "without leave of the chairman."—Mr. T. M. Jessup.

"That this House deplores the decision of the House of Lords in *McAlister or Donoghue* v. *Stevenson*" (48 T.L.R. 494) (Negligence—Manufacturer of Products—Duty to Consumer). —Affirmative, Mr. J. C. Christian-Edwards, Mr. Thomas Kenyon; Negative, Miss H. M. Cross, Mr. F. H. O'Reilly.

Tuesday, 18th October, 1932, at 7.30 p.m. (Chairman, Mr. E. F. Iwi.)

"That this House would welcome the extension of Co-operation and Profit Sharing in Industry." Affirmative, Mr. H. J. Baxter; Negative, Mr. R. S. W. Pollard.

Tuesday, 25th October, 1932, at 7.30 p.m. (Chairman, Mr. R. S. W. Pollard.)

"That the case of *Fauton* v. *Deuville* (1932, 2 K.B. 309) was wrongly decided" (Master and Servant—Accident to Servant—Defective Plant—Negligence of Fellow Servant Common Employment—Duty of Employer). Affirmative, Mr. P. H. North-Lewis, Mr. B. T. Ford; Negative, Mr. E. F. Iwi, Miss Cameron.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, 4th October, 1932 (Chairman, Mr. P. H. North Lewis), the subject for debate was: "That this House welcomes the resignation of the Liberal Ministers."

Mr. R. Langley Mitchell opened in the affirmative; Mr. A. L. Ungoed-Thomas opened in the negative.

The following members also spoke: Messrs. H. J. Baxter, W. M. Pleadwell, L. J. Frost and P. W. Iliff.

The opener having replied, the motion was carried by four votes. There were eleven members present.

The Law Students' Debating Society exists for the discussion of legal and general subjects, and meets every Tuesday evening from October till May, at 7.30 o'clock, at The Law Society's Court Room, 60, Carey-street, Chancery-lane. Ladies and gentlemen desirous of becoming members of the Society will be cordially welcomed, and are requested to communicate with either of the Secretaries: Mr. A. L. Ungoed-Thomas, 8, Old-square, Lincoln's-inn, W.C.2, or Mr. P. H. North Lewis, 22, Great St. Helens, E.C.3. Barristers, solicitors, articled clerks to solicitors, clerks who have been articled to solicitors and members or students of an Inn of Court or University are qualified for election.

THE LAW SOCIETY AT BRISTOL.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

The Forty-eighth Provincial Meeting of The Law Society was held at Bristol from the 3rd to the 6th of October, under the presidency of Mr. C. E. Barry, and was attended by the following members of Council: Mr. R. Armstrong (Leeds), Mr. E. E. Bird (London), Mr. H. R. Blaker (Henley-on-Thames), Dr. A. H. Coley (Birmingham), Mr. G. A. Collins (London), Mr. F. J. F. Curtis (Leeds), Sir Robert W. Dibdin (London), Mr. B. H. Drake (London), Mr. R. Farmer (Chester), Mr. D. T. Garrett (London), Mr. W. W. Gibson (Newcastle-upon-Tyne), Mr. W. A. Gillett (London), Sir J. R. B. Gregory (London), Mr. R. F. W. Holme (London), Mr. L. S. Holmes (Liverpool), Mr. A. M. Ingledew (Cardiff), Mr. W. E. M. Mainprice (Manchester), Mr. P. H. Martineau (London), Mr. C. G. May (London), Sir C. H. Morton (Liverpool), Mr. F. A. Padmore (Manchester), Mr. R. A. Pinsent (Birmingham), Mr. G. S. Pott (London), Sir Harry G. Pritchard (London), Mr. S. Saw (London), Mr. H. H. Scott (Gloucester), Mr. H. N. Smart (London), Mr. F. E. J. Smith (London), Mr. W. M. Smith (Sheffield), Mr. W. M. Woodhouse (London), with Mr. E. R. Cook (Secretary, London).

Receptions and Business.

The Lord Mayor of Bristol and the Lady Mayoress received members and their ladies at 9 o'clock on Monday evening at the Bristol Art Gallery, where, besides the city's other art treasures, a collection of interesting manuscripts was displayed, relating to the history of the mediæval courts of Bristol and throwing vivid sidelights on Dr. W. W. Veale's paper. Probably every guest saw and enjoyed the pen and ink sketches of H.M. judges by Mr. Powys Evans, but not more than a handful penetrated to the University Library to see the collection of old legal books which had been prepared for their inspection. This included a large volume which had been presented by the Bristol Law Society; a general index to the first seven volumes of the "Journals of the House of Commons," compiled by Timothy Cunningham, Esquire, and printed by order of the House of Commons in 1785. There were several vocabularies of English and French legal terms, without which the law text-book of those days was probably unintelligible; several hand-books to assist justices of the peace; and—a reminder of how the law, while it has grown complicated in some directions, has been simplified in others—part of a work by William West on "Symboleographie, which may be termed the art or description of instruments and presidents" (by which the writer probably meant "precedents"), published in 1647.

The formal proceedings began at 10.30 on Tuesday, in the University. The Lord Mayor, Mr. J. H. Inskip, who is himself a lawyer and one of a distinguished family of lawyers, welcomed the Society to Bristol on behalf of the corporation, and Mr. H. R. Wansbrough, president, greeted it in the name of the Bristol Incorporated Law Society. Mr. C. E. Barry, president of The Law Society, then read his presidential address. In accordance with custom, the remainder of the morning and the afternoon were devoted to the reading and discussion of papers, and at 4.30 the Vice-Chancellor of the Bristol University conferred upon Mr. Barry the honorary degree of LL.D. Members and their ladies then took tea with the Vice-Chancellor, and at 7.30 p.m. members dined at the Victoria Rooms. The Society met again on Wednesday morning to hear and discuss papers, and at 1.30 business came to an end. The afternoon was given up to excursions to Messrs. Wills' tobacco factory and Messrs. Frys' chocolate factory, and lady representatives of the Bristol Society entertained visitors to tea at the Clifton Zoo. At 9 o'clock the Mayor and Mayoress of Bath and the President of the Bath Law Society (Councillor W. F. Long) held a reception at the Pump Room, followed by a dance. On Thursday members took part in excursions to Cheddar and Wells and to Cheltenham and Gloucester, and in the evening attended a private theatrical entertainment.

The Presidential Address.

Mr. Barry, in his address to the Society, recalled previous occasions when it had met in Bristol, the last being in 1910, when the late Sir Henry Johnson was President. After a tribute to the Lord Mayor and his father, Mr. James Inskip, an eminent citizen and lawyer of Bristol, he deplored the death of several members during the past year, especially that of Sir Donald Maclean. He emphasised that the membership of the Society had always been voluntary, but expressed the opinion that every member of the profession should belong to it, and advocated compulsory membership which, he said, would give the Society more effective control over the conduct of solicitors and make it more effectively representative of the whole profession. He suggested also that a society should be formed to represent solicitors practising in London but not in the City.

As a result of a paper read at the Bournemouth Provincial Meeting in 1930 on the undercutting by building societies of their solicitors' fees, the Council had taken the matter up and the Scale Committee had arranged a conference with the National Association of Building Societies. The chairman of that association had promised to give the matter his careful consideration, and as a result the offending scales had been withdrawn from the prospectuses of some building societies. Mr. Barry referred to the poor persons' procedure work, and welcomed the Solicitors (Consolidation) Bill. The Council would, he said, introduce into Parliament in the autumn session a second Solicitors' Bill, shorter than the ill-fated one of 1930, giving it power to make and enforce rules for the keeping of accounts by solicitors.

The Council had approached the Home Office to restore the valuable practice by the police of supplying for a small fee a copy of the police report on an accident, together with the names of witnesses and a copy of their evidence, for the assistance of injured parties. The Central Conference of Chief Constables had agreed that for a small fee the Chief Constable should supply an abstract of the police report with names and addresses, but not the statements of the witnesses, and the officer concerned might be interviewed to explain the abstract. Mr. Barry said that he did not consider that this procedure went far enough, and asked for witnesses' statements. He dealt with the measures taken to reduce the cost of litigation and, while disapproving of unlimited jurisdiction for the county courts, agreed that appeals should be limited by cutting out the Divisional Court. He did not, he said, see any future for codification. He closed his address with a reference to the Solicitors' Clerks Pension Fund.

Towards Legal Reform.

Mr. J. W. Robson, President of the Manchester Law Society, showed in his paper on "Commercial Case Law and Arbitration" that the difficulty of giving decisions which would both preserve continuity of legal principle and conform to modern commercial practice was becoming acute. Commercial business was, as Scrutton, L.J., had said, leaving the courts and going to arbitration, which was often almost as expensive as trial by a judge and might be unreasonably delayed by appeals. The legal profession should endeavour to simplify, quicken and cheapen procedure. The majestic structure of English law, though inconsistent, possessed a wealth of resource which could be applied to almost any novel conditions.

Mr. C. L. Nordon, in discussion, said that the uncertainty of the system was a disgrace and that a solicitor might as well toss a coin as attempt a rational forecast of the result of a case.

Mr. Douglas Garrett appealed to solicitors to educate their clients out of the habit of inserting arbitration clauses in contracts under the erroneous impression that they were evading the processes of law.

Mr. H. J. Randall (Bridgend), in his paper "Reorganisation of the Civil Courts," suggested that the county courts should be given unlimited jurisdiction, subject to the power of the judge or registrar to transfer any action at his discretion; that the High Court should be allowed to remit any action to the county court; that every registrar of a county court with a district of over 50,000 should be appointed a district registrar of the High Court; that the powers of registrars to try actions of debt should be increased, and that appeals from the county court should go to the Court of Appeal and not the Divisional Court.

Sir R. Lane Poole sounded a warning that a policy which increased expenditure on the county courts would meet the opposition of the Treasury. He would always, he said, advise a client to choose the High Court in preference to the county court if it were possible. Both he and Mr. A. L. Bryden objected to the transfer of an issue to the county court at the will of the plaintiff. Mr. Carlile Davis (Plymouth) reminded the Society that to send all cases to the Court of Appeal would make it necessary to increase the number of Lord Justices.

Mr. A. C. Hillier (Bath) proposed to replace assizes, county courts and quarter sessions by areas inhabitated by resident judges of High Court rank, and urged the abolition of a system which he considered incapable of reform.

Town Planning and the Landowner.

Sir William Hart's (Sheffield) paper on "The Lessening Shadow of the Landowner," represented, he explained, a contribution from the Society of Town Clerks. He showed by a series of typical instances the continuous tendency of the legislature since the beginning of the last century, irrespective of party, to subordinate the personal rights of landowners to those of the community. The compulsory expropriation of land for railways, waterworks and other public services had been sweetened by generous compensation, but the Acquisition of Land Act, 1919, had cut this down to the ordinary market value. The Public Health Acts imposed innumerable restrictions designed to ensure that house property was safe and sanitary. The Housing Acts gave local authorities power to clear slum areas at the expense of the owner or to improve the housing conditions within them.

The latest inroad upon the landowner's rights, the Town and Country Planning Act, 1932, gave local authorities or joint committees power to make town planning regulations for any land whatever. This tendency was sound and inevitable and Sir William saw in it, he said, no trace of "nationalisation."

Mr. Josiah Green, the Town Clerk of Bristol, continued the theme in a paper entitled "Town Planning." He traced the history of the movement from the pioneer schemes of Bournville and Port Sunlight through the Acts of 1909 and 1919 to the new Act, which he summarised. He reminded practitioners of the necessity of searching the Register of Local Land Charges for planning resolutions and schemes, and of inspecting maps and interim development orders. He showed maps of the plans projected by his own city.

The Solicitor's Right of Audience.

This paper, on one aspect of the proposals to cheapen litigation, roused keen discussion. Mr. B. A. Wortley (Mirfield and London) said that a solicitor might be heard by any court under the exercise of its power to regulate its own procedure. Custom arising out of this principle allowed a solicitor to appear as "trial advocate" before official referees, coroners, magistrates, and Parliamentary committees and commissions at their discretion, and before a revising barrister and at arbitrations. If a court of quarter sessions did not restrict the right, it held good. Statute empowered a solicitor to plead before the statutory committee of The Law Society, the General Commissioners of Income Tax (subject to their discretion), the Railway and Canal Commissioners and various other statutory tribunals.

Sir Roger Gregory suggested that if solicitors used fully their existing powers their plea for extension would carry more weight.

Mr. R. M. Williamson (Advocate, Aberdeen), spoke on "Some Recent Examples of England borrowing from the Law of Scotland," mentioning among others, poor persons' procedure, legitimation by subsequent matrimony, and the equality of spouses in divorce, but he proceeded to point out many points in the law of Scotland which he suggested that this country would do well to adopt.

Dr. W. W. Veale (Bristol) read an interesting historical paper on the Bristol courts up to the end of the fourteenth century. John's Charter of 1188 had restricted burgesses from pleading outside the walls of the town, and the King's justices had visited Bristol until 1373, when Edward III had made Bristol a county with its own sheriff and county court. The Hundred Court had probably, however, still exercised most of the judicial functions, and the new charter had extended its power in civil actions almost to that of the King's Court itself, while other local jurisdictions were decaying. The contrast showed the concessions which a powerful mercantile community could extort from the King. The Law Merchant, with its great practical advantages over the common law, had been administered by the Fair Court, the Tolzey Court and the Court of the Staple.

The programme was full of interest, both for those who wished to be serious and those who wished to be gay. The papers gave full opportunity for members to put forward their views on legal reform, and the town of Bristol, home of ancient legal autonomy, was a fit setting for the discussion of a problem which it solved itself so long ago. At the same time its great buildings and beautiful surroundings offered innumerable delights to those who were tempted by fine scenery, ancient monuments or modern industry. The four host societies—Bristol, Gloucester and Wilts, Bath and Somerset—are to be congratulated on a thoroughly successful meeting.

The President's Address.

Mr. Charles Edward Barry, the President, delivered the following address:—

It is a peculiar pleasure to me that The Law Society should this year pay their fourth visit to Bristol. The first visit was paid in the year 1877, when Mr. Burton was President of The Law Society, and the late Mr. R. G. L. Vassall, President of the Bristol Society, entertained them.

The Law Society met in Bristol again in the year 1894 under the presidency of the late Mr. John Hunter, when the late Mr. Henry Cooke was President of the entertaining society.

The next and last meeting was held in the year 1910, the late Sir Henry Johnson being the President of The Law Society, and it is a coincidence that he and I were articled in the same office in the Old Jewry.

It is a great pleasure to me that the present meeting should take place while I have the honour of being President of The Law Society, and the President of the Bristol Society, which is entertaining us, is my old friend, Mr. Wansbrough.

I cannot help referring to the fact that the Lord Mayor of the City of Bristol is a well-known and popular lawyer, and I think it is a matter of congratulation to all of us that Mr. J. H. Inskip should occupy that high office during the visit of The Law Society to Bristol. The name of Inskip is well known to all of you. His brother has attained the office of Attorney-General and Head of the Bar, and the Lord Mayor himself is a well-known lawyer in the city, and their father, Mr. James Inskip, who died not very long before the last visit of The Law Society to Bristol, was, in my opinion, the ablest lawyer we have had in Bristol during the fifty years I have resided here, indeed, I do not think I shall go far wrong if I were to say he was one of the ablest, if not the ablest, citizen we had during that period.

I regret that during the past year the Council have lost three members by death and one by resignation.

First of all I must refer to the sudden death of Sir Donald Maclean. An outstanding politician of the type we cannot spare; a keen lawyer, and a very useful member on the Council, who will never be forgotten, and although he had upon his shoulders all the burdens and responsibilities of a Cabinet Minister yet he still attended the Council meetings, and had agreed to be nominated as Vice-President of the Society for the present year, and if it had not been for his untimely death he would no doubt have been at this meeting in his capacity of Vice-President of the Society.

I think you will agree with me that his loss is a very severe one, and I would like on your behalf to offer our sincere sympathy to Lady Maclean and her family.

Mr. Charles Mackintosh, who died suddenly, was a most valuable and able colleague. We also regret the death of Mr. Jessopp, who was an Extraordinary Member, representing the Eastern District Group of the Provincial Law Societies.

Sir Arthur Copson Peake has unfortunately, owing to declining years, felt bound to resign his position on the Council, but I can safely say that no one will be missed more than he. He was always willing to give assistance to the Council at any time and was one of the pleasantest and most congenial of colleagues.

I must mention Sir Herbert Gibson, who has died within the last few weeks. He was President during the centenary year; he was a most successful President, and I think it was felt by all that no one could have better represented the Society during that important year.

There is also Mr. Hickley, who has recently died. He succeeded the late Sir Walter Trower as hon. treasurer. He was a most valued member of the Council, a very hard worker and much beloved by all his colleagues on the Council.

The Law Society as you know is now at the present, and always has been, a voluntary society. There has been no compulsion whatever upon the members of the profession to join its ranks, and yet at the present time out of 15,600 lawyers who take out practising certificates, 10,328 are members of the Society, and many of them have partners who, though they are not members, come under the direct influence of the Society. Thus it is that the Society's influence is even greater than the figures show and is a very powerful factor in the administration of justice.

The first Charter of The Law Society, or rather the Incorporated Law Society, as it was then called, was granted in

1831. There had existed before that year a society called The Society of Gentlemen Practisers in the Courts of Law and Equity, which was formed in the year 1739. The minutes of proceedings were handed to The Law Society in the year 1834, so that the Society of Gentlemen Practisers can be considered as the forerunner of the Incorporated Law Society, now The Law Society.

There was also another society formed in 1819 called the Metropolitan Law Society, formed for maintaining and raising the status of the profession. I am not sure when this society ceased to exist. Later on in 1847 a society was established "with the friendly aid and sanction of The Law Society" called the Metropolitan and Provincial Law Association, which continued to exist until I believe the year 1874. It was in the habit of holding meetings in the provinces and I find that in the year 1870 it paid a visit to Bristol when it was entertained by the Bristol Law Society. On that occasion the late Mr. H. S. Wansbrough, a well-known and much respected solicitor, was President of the Bristol Society.

As I said before, the first Charter of The Law Society was granted in 1831, and long before that date it had been the wish of many members of the profession to form a society such as we have, and as far back as the year 1823 a prospectus was issued in which the following appears :—

> "A public Institution of the nature proposed, the members of which are to be composed only of the most respectable and leading men in the profession (it being intended carefully to exclude all disreputable characters) will serve to impress the public with a higher opinion than it at present entertains of the weight and respectability of the profession at large and to remove those unfounded prejudices which, from the want of a line of demarkation between the reputable and disreputable part of it, the malpractices of an inconsiderable number of unworthy members have raised against the whole body."

It will be seen from this that a high ideal was set before the members, who were asked to join in establishing a society, and I believe that when the Society was formed in 1831 the membership consisted of 695 practising solicitors.

It will be seen from the quotation I have made that the whole idea was that The Law Society should be a voluntary body, and that there should be no compulsion on any solicitor to join; indeed there was an entrance fee charged to all joining of £15, when the Society was first started, and subsequently this was reduced from time to time until the year 1879, when it was finally abolished.

When the Society was originally constituted there was a mixture of a joint stock share element with a system of annual subscription, but in the year 1845 the shares were all bought up and got rid of, and the Charter of 1831 was surrendered to the Crown and the new Charter granted on the 26th February 1845.

I have often been asked when first it was solicitors had to pass an examination prior to being admitted to the profession. Prior to 1836, although lectures on different branches of the law had been established, nothing was necessary in order to become a member of the profession, except to be articled to a solicitor, and to give due evidence of service under articles, and also, I presume, of character.

Personally, I, and most of us, probably felt when we passed our final examination that we wished we lived in those good old times, and I expect many of the articled clerks of the present day have the same feeling about the matter. Examinations, however, were instituted under Rules of Court in 1836, under which the judges appointed sixteen members of the Council of The Law Society, together with certain officers of the court, to superintend the examinations. This applied to persons desirous of being appointed attorneys, and a similar order was made by the Master of the Rolls with reference to equity solicitors, and later on, under the Solicitors Act of 1843, certain further regulations were made for the conduct of examinations by the judges and the Master of the Rolls. It was not until the year 1877 that an Act was passed by which the whole control of the Preliminary, Intermediate and Final Examinations were entrusted to The Law Society, who since that date have carried them on under a special Examination Committee.

I think I have shown to you that The Law Society has always been on a voluntary basis. Whether or not that is best in the interests of the profession is a matter over which there is a good deal of controversy, and to this I shall allude hereafter. I wish to make it quite clear that if I express any opinion on this or any other subject in my address, I am only expressing my own individual opinion and not the opinion of the Council. I believe it is the privilege of the President in his address on these annual occasions to give full vent to his own opinion on any subject that may be raised.

Now I would like, as far as it is possible, to deal with questions I often hear raised, namely: What is the good of The Law Society? What do the Council do? Is it not a waste of time and money to hold these provincial meetings?

Well, the easiest thing in the world is to criticise, and I would like to call the attention of those who say that The Law Society and the Council do nothing and that it is no use joining the Society, to consider what the position would be if there were no Law Society at all.

My predecessor, Mr. Martineau, in his address last year at Folkestone, pointed out what a large amount of business is done by the committees of the Society, and instanced two committees, the Professional Purposes Committee and the Scale Committee, one of which sits every week and the other every fortnight, the members of which give a great deal of time and thought to the important matters that are brought before them.

There are many other committees, such as the Legal Procedure Committee, the Parliamentary Committee, the County Courts Committee, the Committee on Legal Education, the Examination Committee, and many other committees appointed *ad hoc* which are continually sitting and continually dealing with matters of interest to the profession. There are also weekly meetings every Friday of the Council. The Society is constantly in touch with various government departments with reference to matters of interest that crop up from time to time. The Council bring their influence to bear upon all current legislation which in any way touches on the administration of justice or otherwise affects members of the profession in their dealing with their clients. This covers a wide field and I doubt if there is any other public body which does more, if as much. I ought also to mention the Discipline Committee, a statutory body which does an enormous amount of work, whose decisions given with that care and thought, characteristic of its members, have seldom, if ever, been overruled on appeal. The Society is also in constant touch with the Lord Chancellor's office from which we receive the greatest courtesy and sympathetic consideration.

I would mention particularly Sir Charles Morton, and Sir Roger Gregory, who are the representatives of The Law Society on the Supreme Court Rule Committee, and take an active part in matters that come before that committee, and Dr. Coley who is our representative on the County Court Rule Committee.

I would point out to you, it is not only the work done through the Council and the committees that counts, but I can assure you, and I think you know it, that our Secretary, Mr. Cook, is indefatigable, and it was not until I became Vice-President that I really knew all the work that Mr. Cook does. To sit in his room and hear him interviewing members of the profession who want information or assistance in matters that arise in connection with their practice, and the way that Mr. Cook deals with them, and as far as I can see generally satisfies them, is an education, and Mr. Cook always has the interests of the Society in view.

I remember on one occasion within the last few months, when some provincial solicitor consulted Mr. Cook with reference to, I think it was, some dispute with a colleague. Mr. Cook went into the matter, and at the end of the interview the solicitor in question thanked Mr. Cook for the information and advice he had given him, and Mr. Cook said: "I presume of course you are a member of the Society," the reply was "No." I can only add that before the gentleman had left Mr. Cook's room he had signed an application to become a member, and was subsequently duly elected.

In view of all the work the Society does for the profession, I submit it is the duty of every member of the profession to belong to the Society, and that one of the first things a young solicitor should do is to join its ranks, and throw in his lot with the great bulk of his professional brothers and thus help to maintain the status of our profession which has such an honourable record.

Then again I think that these provincial meetings do nothing but good. We hear interesting papers read; we exchange views on different subjects which enables us to realise what members of the profession are thinking in all parts of the country. And as to the social side of these meetings, so far from their being a waste of time and money, I think it is to the advantage of the profession that they should have an opportunity of meeting other solicitors from different parts of the country and getting acquainted with them. Not only does it add to the pleasure of life, but it is also extraordinarily useful when we come into business contact with those whom we have come to know personally. You will all agree that if you know the solicitor you have to deal with, it makes it far easier than if he were a total stranger. I am sure it is not only to our advantage, but it is also to the advantage of our clients.

Now, arising out of this I am coming to rather a controversial subject, and that is the subject of compulsory membership. I do not intend to say much about it, except that I have often

heard it said as a reason for not joining The Law Society that it is unreasonable, the work of the Society being for the benefit of the whole profession, that some members of the profession should be asked to join whilst others are not compelled to do so.

Assuming that the Society is essential to the profession, and there can be no question about that, is it not the duty of everyone to belong? I sympathise with those who think that the constitution of the Society should be altered so as to make membership compulsory.

I will just tell you in a few words the history of this question. As far as I can make out it was raised originally in 1875 by the late Mr. Bircham at the meeting at Liverpool, but I gather that he did not then advocate any steps being taken to bring it about.

In 1899 the Council passed a resolution that it was not expedient to enforce compulsory membership, and as far as I know the next occasion on which the question was raised was in 1920 when a committee of the Council was appointed to consider the matter.

After a very interesting report they recommended as follows:—

> "The Committee are of opinion that it is desirable that all Solicitors should become members of The Law Society, and they consider that it is feasible to take steps to secure that they shall become members accordingly.
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> "They recommend that in the first instance the views of the Provincial Law Societies should be ascertained on the general principle involved, and if the Societies and subsequently the Council should adopt that principle, then that this report should be referred back to the Committee with instructions to draft such legislation, charters, bye-laws, and regulations as they may consider, or be advised, necessary for giving effect to that principle,"

but I should add that the late Sir Walter Trower issued a minority report, being strongly opposed to compulsory membership.

The matter was referred to the Associated Provincial Law Societies, who replied as follows: Twenty in favour, eight against, and four in favour of the principle only. The majority did not send in any reply.

The question was subsequently discussed at different meetings of the Associated Provincial Law Societies, and although strong opposition to compulsory membership was voiced at one or two of the meetings no direct resolution was passed on the subject. A resolution, however, was carried advocating that all solicitors should be members of the Society, and that steps which were there indicated should be taken to induce them to join.

You will see what my opinion is, and it is a question that will sooner or later have to be considered and decided one way or the other.

It seems to me that one of the advantages of compulsory membership is that it would give the Society more effective control over the conduct of solicitors than they have at the present time. It would make the Council more effectively representative of the whole body of solicitors, and not of those only who are members. This was the view taken by the committee I refer to.

Another question that calls for consideration is, I think, the difficulty in ascertaining the real opinions of the London members of the Society. It is so different with the Provinces.

The Associated Provincial Law Societies is a body which has existed for a considerable time, and has always had a very able secretary; at first, Mr. Thomas Marshall, late of Leeds, then our good friend Sir Charles Morton; afterwards Mr. W. H. T. Brown, who I regret had to retire through illness, and now Mr. L. S. Holmes, the three latter of whom hail from Liverpool, so it looks as if something good does come from Liverpool.

There are sixty-eight Provincial Societies, who are members of the Associated Provincial Law Societies, leaving only twenty smaller societies outside the Association, and I believe some of them are affiliated with the other societies, and when any question of great importance arises the Council are able to refer such question not only to the various constituent local societies, but to the Associated Provincial Law Societies, and the matter is brought up at the Associated Provincial Law Societies meetings, the constituent societies having had full time to consider the points raised, and the question is discussed and a conclusion is come to.

Now, what happens with regard to London solicitors? That admirable body, the City of London Solicitors' Company, which does such an exceedingly good work, ascertains the views of its members on subjects such as I refer to before they crop up at any general meeting in Hall, but their activities are limited to the City, and only members practising within its confines are eligible for membership.

I suggest that it would be a great advantage to the profession and would facilitate our discussions in Hall if either the London Solicitors' Company would develop and extend its activities amongst those outside the City, or that there should be some similar body representing the members of our profession who do not practise in the City, so that their views could be ascertained by the Council when desired.

Of course, neither the opinions of the Associated Provincial Societies or of the members in Hall relieve the Council of their responsibility to come to a decision and act as they think right. In my opinion, it is the duty of the Council who are elected by the members of the Society to give a lead to the profession and decide what is, in their opinion, best in the interests of the profession.

At the Provincial Meeting at Bournemouth in 1930, a paper was read under the title "Undercutting by Building Societies and the Remedy." The matter was taken up by the Council, and I propose telling you what has been done so that you may realise that the Council have not let the matter drift.

It appears it had been the habit for some time of building societies not only to have a special scale of costs between their solicitor and themselves in respect of mortgages, but also to have a special scale of costs for the conveyances of properties bought by persons seeking advances on mortgages from the building society. These scales for conveyances are generally very low, and the practice falls under two categories.

Some building societies advertise these conveyancing scales in their prospectuses, on which would also probably appear the name of their solicitor, and other societies who do not advertise them have a special scale of costs which they insist upon their solicitor charging to borrowers who are willing to entrust the conveyancing part of the transaction to the building society's solicitor as well as the mortgage.

Another practice of some societies is where the borrower instructs the building society's solicitor to act for him in the purchase, then to insist upon the solicitor charging a lower scale of fees for the mortgage part of the transaction.

The matter was gone into, and I believe the fee laid down by the building society for the solicitor to charge in one case was as low as £4 4s. where the purchase money was £1,000, and other scales were on an equally unremunerative basis.

It is obvious that if these scales are advertised, or if they are known to be used by any particular society, it is a great inducement to the borrower to pass by his own solicitor and go to the building society's solicitor, and I submit it is an extremely objectionable practice.

The matter has been carefully considered by the Scale Committee, who recommended that they should have power to arrange a conference with the National Association of Building Societies with the object in the first instance of securing not merely the elimination from building societies' prospectuses of all reference to conveyancing scales, but that no such scales should be adopted by the building societies generally.

A conference was held between the representatives of the Council and the executive of the National Association of Building Societies, when a discussion took place, and the building societies were urged to refrain from advertising reduced scales of charges upon which the building societies' solicitors were prepared to carry through conveyances of property being mortgaged at the same time to the building society.

After a full and free discussion the Chairman of the National Association of Building Societies promised to give the matter his most careful consideration, and I think the result has been in some cases that the scales have been withdrawn from the prospectuses of building societies.

It is difficult to see what more can be done in the matter, but I would strongly urge upon local law societies finding any such practice in existence in their areas, that they should communicate with the building society, and also put the matter before the solicitor concerned with a view to the practice being altered.

With regard to these low scales the public forget that the solicitor is responsible to his client if there is anything wrong in connection with the title to the property, and as he is under this liability it is only right that he should be properly remunerated, and it may be the client who will lose by reason of these undercutting charges.

I cannot refrain from alluding to the Poor Persons Procedure, and the work that has been done by members of the Society in connection with it, and I commend the report of the Poor Persons Procedure for the year ending 31st December, 1931, to your careful consideration.

As you know, the whole of this work, which was previously controlled by a government department, was handed over to The Law Society and the Provincial Law Societies some years ago, and I think we as a profession have reason to be proud of what has been done.

The Council of The Law Society through committees deals with the London cases, while those in the provinces are referred to the various Provincial Law Societies whose committees deal with the applications received.

This involves a very large amount of work, and I can assure you that the Committees take the greatest possible trouble in investigating cases and the position of the applicants with a view to ascertaining (1) whether there is a good cause of action, (2) whether the applicant is a person who falls within the rules as being entitled to assistance, and the greatest care is taken to prevent the procedure being abused, and to avoid persons being assisted whose means would not justify it.

I observe that in London alone during the last five years, after very full investigations, very considerably less than half the applications have been granted, and I believe the provinces show much the same results.

A large number of solicitors offer their services, which are given without any prospect of remuneration, but it is very necessary that more names should be sent in.

It is a great work, and a work which the Bar also join in, and I consider it reflects the greatest credit on those members of the Bar and the members of our profession who are willing to give their time for the assistance of the poorer members of the community.

Some of the largest and busiest firms undertake this work, and some of the busy leaders of the Bar also give their time in furtherance of it, and I do not think that any profession can claim to do more for the assistance and the benefit of the poorer members of the community than the legal profession.

I would like to call your attention to the Solicitors Consolidation Bill.

This Bill was introduced into the House of Lords by the Lord Chancellor, and was referred to a Committee of both Houses, and the report of such Committee was entirely favourable.

I need scarcely remind you that this Bill does not introduce any fresh legislation or alter the existing law relating to solicitors in any respect, as it is purely and simply a Consolidating Bill, but it is of great advantage to the public and also to our profession that the whole of the Acts relating to solicitors should now be collected under one, and be consolidated as is done by this Act.

There is an explanatory memorandum attached to the Act explaining that it is merely a Consolidating Bill without making any alteration in the existing law, and it goes on to state that the Bill will remove from the Statute Book sixteen Acts, and practically the whole of two others.

To my mind it is extraordinarily ably done, and I am sure we owe a deep debt of gratitude to the Lord Chancellor for having taken up this Bill, and for having piloted it through Parliament.

This brings me to what I may call the "Solicitors Bill." You will remember that late in 1930 the Society brought in a Bill, after having submitted it to the Provincial Societies and after it was fully discussed at a meeting of the Associated Provincial Societies and also in Hall; the Bill was introduced into the House of Commons by Sir Dennis Herbert and was talked out.

We have now decided to bring in a shorter Bill giving the Council power to make rules with reference to the keeping of accounts by solicitors and giving the Council certain powers of discipline over those who fail to comply with those rules. The number of what is known as defaulting solicitors is an exceedingly small fraction of the members of our profession, and having regard to the large funds that pass through solicitors' hands and the confidence reposed in us by our clients, we have every reason to be proud of our profession which has such an honourable record, and the agitation that is carried on in some quarters is quite unjustified. Reports of the cases which crop up from time to time of necessity appear in the press and the public get an exaggerated idea of the number of such cases. The Council feel, however, that no stone must be left unturned to remedy the evil and they hope to obtain power to make regulations which will as far as possible prevent or at any rate minimise the occurrence of such cases in the future.

The Bill will be introduced into Parliament in the Autumn Session, and I can assure you that the principles of the Bill have already been approved by the profession. It is for the Council to give a lead in the matter, and this they intend to do and to press on the Bill as much as they can.

There is a matter which is of great interest to the profession, and also very much affects the general public, that is the position taken up by chief constables with reference to supplying information to litigants in connection with accidents of which the police make reports.

Up to recently I believe the practice in London and many provincial districts where an accident had occurred, and it had been decided that no criminal proceedings were to be taken, was to supply a copy of the police report and the names of witnesses and a copy of the evidence they had given to the police; all this was done for a small fee. In some districts much more limited information was supplied.

It is obvious that there ought to be uniformity of practice.

It is also, I submit, equally not unreasonable to expect the police to assist people who are litigants in these running down cases, as it is chiefly, if not entirely, in respect of this class of case that the difficulty arises.

I believe a complaint has been made by one judge at any rate with reference to the matter, and the desirability was pointed out of the police assisting the ends of justice by supplying reasonable information when asked for. Representations to the Home Office have been made by the Council, and a reply has been received from the Home Secretary stating that the matter has now been considered by the Central Conference of Chief Constables, and the following conclusions come to, and it is hoped the procedure in the various forces, as far as circumstances permit, will follow the following lines:—

(1) The chief constable to supply an abstract of the police report with names and addresses of the witnesses, but not their statements.

(2) An interview with the officer concerned to elucidate the points in the abstract, but if required to attend court the officer must be subpœnaed.

(3) A small fee to be paid for abstract and any interview desired.

I do not think the above goes far enough, and I submit that copies of the witnesses' statements should be supplied. I see no reason why they should not be and they would be obviously a great help to any solicitor in advising whether to bring or defend an action. The statements of witnesses made at the time while the facts are fresh in their minds are more satisfactory and helpful than interviews with witnesses held perhaps some weeks after the event. They would also be a great help to Poor Persons Committees who have to decide whether a particular applicant has a good case or not.

The Council are therefore asking the Home Secretary to reconsider this point.

The following reply has recently been made by Mr. Stanley on behalf of the Government to a question in the House of Commons:—

"There has been little change in the conditions under which abstracts of police reports are furnished, except that, under the present practice, copies of any statements made to the police by witnesses are no longer supplied except to the persons who made them or their authorised representatives, and there has been an increase in the fees payable. The reasons for these changes were explained by my Right Hon. Friend in reply to questions on the 8th and 9th June by the Hon. Member for the Westhoughton Division and the Hon. Member for Leicester East."

With reference to the cost of litigation, my predecessor dealt with that very fully and ably in his address last year, so that I do not propose to go into it in detail; however, I would point out to you that the new rules which he then foreshadowed have now been passed, and came into force in respect of all actions commenced after the 24th May last.

It is, therefore, too early to know what the result of the rules has been, or whether they will have had the effect of speeding up and cheapening litigation.

It is, however, a genuine attempt by the Rule Committee to propound some rules after having considered the suggestions made by the Bar Council, The Law Society and the London Chamber of Commerce.

I know there has been criticism of these rules, but it seems to me that they enable a judge to have more control of the action, and at an earlier stage than the actual hearing. They postpone the summons for directions until after the pleadings are closed. We all know what a farce a summons for directions has been up to now, an order for pleadings almost always being made. It has been a useless expense, but the new summons for directions coming after the issues are joined will enable the judge to give directions as to evidence, and more particularly the number of expert witnesses, as to documents to be put in evidence, and how this is to be done, and whether the action is to be tried with a jury or by a judge alone, and as far as he possibly can to fix a date for the hearing.

The rules have only limited application as they do not affect district registry cases, with the exception of Liverpool and Manchester. If, however, as I hope, these rules have the result for which they have been enacted, then the question of extending them to a further class of actions than are affected at present, and to district registries generally, will no doubt be considered. They are only, so to speak, tentative, and if successful will, I feel sure, be extended, and I hope members of our profession will as far as they can make use of them.

We are grateful to the Lord Chancellor and the Rule Committee, on which, as I have already mentioned, sit two of the members of our Council, for having made a genuine effort towards cheapening litigation.

To give unlimited jurisdiction to the County Courts is a suggestion that has often been made with a view to facilitating and cheapening litigation, but that is not a matter that the Bar, to say the least, are at all likely to be enthusiastic about, and, personally, although I think the jurisdiction should be extended, I consider the time is not yet ripe for unlimited jurisdiction being given to County Courts. It is obvious that when, if ever, this is done, the salaries of County Court judges will have to be considerably increased, and the constitution of the various courts and districts altered.

I am personally, and here I am only expressing my own opinion (and I know many members of the profession do not agree), not in favour of giving unlimited jurisdiction to the County Courts.

It is a big question, and I have no time to go into it more fully, but I do desire to say that in my opinion, before adopting such a drastic course, we ought to concentrate upon doing what we can to popularise, cheapen and expedite the procedure of the High Court.

The man in the street may scoff at solicitors when we talk of the desirability of cheapening litigation, but why? It is in the interest of the lawyer that litigation should be carried out as cheaply and as expeditiously as is consistent with efficiency, and do not let us forget that the successful solicitor takes every care to keep his client out of litigation, and advises him to settle if it can be done on reasonable and proper terms, and only in cases where it is absolutely necessary does he advise a fight.

A client does not know at the beginning before he enters into litigation what the experience at the end is likely to be; the solicitor does.

With reference to other means of cheapening litigation I do not intend to refer to the question of counsel's fees and what is known as the two-thirds rule, except to say that is a matter that is constantly before the Council, and representations have been made in the proper quarters. As you know the two-thirds rule has recently been modified in cases where the leader's fee is over 150 guineas, but we do not think this goes far enough as it only affects a comparatively small number of cases.

We, as a profession, have made our contribution to lessening the expense not only of litigation, but legal matters generally, including the cost of conveyancing. We have voluntarily agreed that the 33⅓ per cent. authorised to be added to profit costs should be reduced to 25 per cent. in litigious matters, and to 20 per cent. in other matters.

I think this is only right and fair. Our clients are suffering through the depression in the world trade which affects so many incomes, and we, as a profession, desire to make this contribution for the general good. It is a real sacrifice as the overhead charges of solicitors have gone up considerably within the last ten or twelve years; however, I am quite sure the profession as a whole will approve and support the Council in what they have done.

There is one matter which I think might be considered, and which has been suggested more than once, that is that there should be some limitation of appeals.

It is a very difficult question, and anything that would deprive the public and the profession of the extraordinarily able and helpful decisions of the House of Lords which we get from time to time would be a great loss.

I make, however, one humble suggestion, and that is that all appeals should go direct to the Court of Appeal, and that there should be no appeals to the Divisional Courts as in many cases there are at present. This would limit the appeals to some extent, which would be, I submit, an advantage.

I quite see that cutting out of the Divisional Court will not have any great effect upon the costs of litigation, but it would have some; at any rate it is a suggestion I desire to make.

I have heard it suggested that codification of the laws, written and unwritten, would make things so clear and so simple that it would of necessity cheapen litigation. It is too large a subject to deal with here, and I can only say, to my mind, it is quite impracticable and would not have the desired effect.

I am asked to give you a review of the activities of the Society with reference to the Solicitors' Clerks' Pension Fund, which was inaugurated under the auspices of the Society, and of which the Society is trustee. It should be a source of gratification to all of us that the fund is now firmly established and has a substantial fund soundly invested and a steadily increasing membership. The number of members, however, is still far short of what is hoped for, and this is not due to any disregard on the part of solicitors of the interests of their staffs, but can be attributed to other reasons. The depressed state of industry in the country as a whole has no doubt caused many members of the profession to hesitate or to postpone joining. I would urge all members of the profession who have not already done so to look into the matter and to see if they have suitable members of their staff who could become members of the fund. As the rates of contribution depend upon the age of a member at entry, it follows that the longer a decision is postponed, the more expensive are the contributions. I am aware that some firms have their own pension schemes and other firms are attracted by group insurance schemes propounded by insurance companies. While such firms cannot be accused of ignoring the claims of their staff, I venture to urge them to reconsider the whole question, as no scheme applicable only to a particular firm can be of the same benefit to the clerks as a fund which embraces the whole profession and is managed by representatives of solicitors and clerks for the sole benefit of the members of the fund.

I quite see the difficulty to the scheme with reference to older clerks, as the contributions which would fall upon both the solicitor and his clerk would be too heavy, and the scheme is essentially for the younger members.

I feel this difficulty very much myself, but it is to be desired that solicitors should carefully investigate the prospectus and rules and see if they have not got some members of their staffs who would join, and in doing this you will realise that you retain in the profession a better class of clerk, and this will naturally result in general benefit to the profession.

I would like to put before you an example which has been given me of a clerk of twenty-five who makes a contribution of just under £5 a year and his employer doing the same; the clerk would be entitled at sixty-five to receive a pension of £100 a year for the rest of his life. Even if he dies within three years it must continue for the three years, same being paid to his representatives, and of course as you will see from a perusal of the scheme there are provisions for benefits to be given to clerks who through illness or other reasons are unable to keep up their payments.

There is to my mind one thing lacking in the scheme, and that is it only applies to men clerks. I quite appreciate the difficulty about women clerks, but I trust, as they are, as far as my experience goes, increasingly employed by solicitors, some scheme will be evolved later on to deal with this matter.

I am sure we are all most grateful to my friend Mr. Drake, a Member of the Council, who read a very able paper on the subject at the Eastbourne meeting three years ago, for all he has done in connection with the scheme, he being really the father of it.

Let me conclude by saying that it is the desire and aim of all of us to maintain the rights and privileges of our profession, but I hope we shall not act in any narrow or selfish spirit and not waste our time and energy in raising points that do not matter and magnify too much so-called encroachments on our rights that are unworthy of our consideration.

Commercial business and methods have changed in a remarkable manner in recent years, and necessarily so, and we lawyers have had to adapt ourselves to those changes.

The more progressive we are in dealing with matters that come before us the more successful I am convinced we shall be.

Let us take a broad view and a long view of matters affecting our profession.

We are officers of the court and servants of the public, and I can safely say that the trust reposed in us has been faithfully discharged and it will always be our endeavour to justify the confidence reposed in us.

Above all, let us do all we can to maintain and enhance the honour and integrity of the profession to which we belong.

If we do this we shall, if I may slightly paraphrase words which many years ago I heard used by the late Lord Beaconsfield in the House of Lords:—

> "Do that for which our profession will be grateful and of which our posterity will be proud."

Mr. WANSBROUGH proposed a hearty vote of thanks to his old friend Mr. Barry for his address, but regretted that one who was that afternoon to receive the degree of LL.D. had not managed some slight degree of £.s.d. for his colleagues in a poverty-stricken profession. He supplemented the hearty welcome expressed by the Lord Mayor on behalf of the Bristol Incorporated Law Society. The hon. secretaries, he said, had done an immense amount of work for the enjoyment of the guests, and the longer they stayed, the better the hosts would be pleased. The Gloucester and Wiltshire Society, the Bath Society and the Somerset Society had co-operated in preparing a welcome.

Mr. J. Walter Robson (President of the Manchester Law Society) read the following paper :—

Commercial Case Law and Arbitration.

This brief opportunity which is annually afforded to members of The Law Society for conference, quite properly produces for the most part papers on subjects of immediate practical interest to the profession. Since the last Annual Provincial Meeting, however, there has been a recrudescence, in the public press and elsewhere, of criticism of legal procedure in the courts, of the cost of litigation, and of the uncertainty of the law. Advocates of codification, of arbitration, and of reforms in procedure in litigious matters have aired their views; and the profession has been quick to realise that there is some ground for dissatisfaction on the part of the public. The nature of these complaints and proposals for meeting them are being discussed, it is to be hoped with good results, at these meetings, and it will be the duty as well as the privilege of this Society to assist in translating into action whatever suggestions may appear to be practical and commendable and in the interests of the public.

There is, in the mind of the litigant, especially in commercial matters, a feeling that, however well he may be served by his legal adviser, both as to opinion and also as to conduct of his case, the result of his proceedings is very uncertain, and he attributes this uncertainty to the state of the law. He realises that his professional adviser cannot possibly predict what view of the evidence a jury will take; but when he has been told that the law is in his favour, and judgment has nevertheless been given against him, he may be excused if he calls the law hard names.

Daily contact with the affairs of clients and the necessity for dealing with these in a practical manner, does not allow to the solicitors' branch of the legal profession time or opportunity to examine the springs of judicial conduct from which the judgments of the courts flow. These provincial meetings are not conferences of jurists, but gatherings of professional men (and women) interested mainly in what affects their daily work. It is, however, well within the province of the meeting to consider and discuss subjects which may not be of immediate practical utility, but which form important parts of the great system of law which solicitors assist to administer.

With this in mind, it will probably be interesting to refer to some of the difficulties presented to the minds of the Bench in reconciling decisions, and the attitude of the judges towards these difficulties.

Text-books furnish statements of the effect of decisions on any particular point of law; few of them trace the development of a principle. The judges of the High Court are constantly striving to "reach a result which, while consistent with legal principle, shall harmonise with the conditions of the age." It is supposed that they merely declare the existing law; in truth, they are subject to the restrictions of precedent and statute, and often to the necessity of collaboration with a jury, and in many instances the task of applying old principles to new circumstances is extremely difficult. The business man can hardly be expected to appreciate these difficulties to their full extent.

In his preface to the "Book of English Law," Professor Edward Jenks describes his subject as "a living picture or reflection, formless and difficult to describe, of the unconscious working of the English mind as expressed in tradition, statute and judicial decision," and he dedicates his book as a tribute to the "creation of the one great system of indigenous national law which the world has produced." This is eulogy, but it is not exaggeration; every lawyer will confirm the aptness of this description of English law.

In what direction, then, is its development progressing in these modern days? Professor Fifoot considers that it is the social background upon which the main doctrines of English law have developed. Professor Laski, on the other hand, does not know how an adequate theory of judicial decisions can be constructed except in terms of the economic interpretation of history—an opinion which suggests that mere expediency has been the main factor, even in quite recent times.

The accusation is made that the Anglo-Saxon character is a curious mixture of the rankest sentimentality crossed by a streak of grimmest criticism. If this be true, and if it is also true that the social background is the moulder of our law, some anomalies and anachronisms must be expected.

There is consequently still a "time-lag" between legislation and modern conditions, of which many instances might be given. A great number of legal decisions which to-day are accepted as binding are out of touch with common sense. The law does not work with that precision and accuracy which the public has a right to attribute to it. Whilst Lord Coke declared that common law was nothing more than common sense, occasions arise on which even the judges cannot assent to the truth of this saying.

In the case of *Ward* v. *Van Loeff* [1924] A.C. 678, Lord Blanesburgh confessed that his decision was manifestly absurd, but he was powerless to do aught but follow precedent. That is the doctrine of "*stare decisis*," a principle which affects the minds of some judges more than others, and which, if it is carried too far, will seriously hinder the development and beneficial use of a great legal system. Whilst this principle tends to preserve stability and renders the task of the lawyer in advising his client less difficult, it is to be observed that English judges to-day are showing a tendency to "satisfy reasonable demands" not by "conscious invention," but by taking into consideration the social background for each decision as well as the state of the law.

Professor Aron, of the United States Bar, has noted this in his recently published book on evidence. "Bold and progressive minds," he says, "have questioned the sanctity of the doctrine of '*stare decisis*' and are refusing to accept many of our principles of jurisprudence and legal procedure as the supreme work of all-wise creators."

There is nothing wrong with the law; the old reproach which was justified before the Common Law Procedure Act no longer can be levelled at the judicial system. It was Lord Macmillan who considered that the fundamental difference between the common law of Scotland and the common law of England lay in the fact that in England you have to find the remedy in order to discover the right; whereas in Scotland you have to find the right in order to discover the remedy. That is not true of the English legal system to-day. The courts will entertain and deal with every kind of claim, and justice is denied to none.

Since the Judicature Act of 1873, it is assumed that a fusion of law and equity has taken place. But many a litigant with unclean hands comes into the courts of common law, and succeeds, if he is protected by a suitable previous decision of the courts.

Reference has been made to the difficulties created by the doctrine of "*stare decisis*" and the effect of what are called binding decisions on the minds of the judges. It may be of interest to refer to one or two recent commercial cases which have passed through various stages of appeal, and which have elicited from the judges comments on this subject. They are instances of divergence of opinions which are somewhat disconcerting to the litigant, as well as to the lawyer.

The first instance is that of the case of *W. Hillas & Co., Ltd.* v. *Arcos, Ltd.*, Comm. Cas. 36, p. 353. This case related to a contract for the sale of specified timber entered into by the Russian trading company named Arcos, Ltd. There was a clause in the contract providing that the buyers, the plaintiffs, should have the option of entering into a further contract with the sellers for supplies of timber during the following year. The quantity of timber to which the option was to apply was specified, and a method of arriving at a price was also stated, but the stipulations as to certain other conditions were somewhat ambiguous; e.g., the precise kinds, sizes and quantities were not specified. The case was heard in the first instance before Mackinnon, J., and a jury. The jury found that there was a valid contract. Mackinnon, J., gave judgment for the plaintiffs, and awarded £30,000 as damages for breach of the contract. The defendants appealed on the construction of the option clause, and the plaintiffs with regard to the amount of damages, which they claimed should be £132,000. The defendants' appeal was allowed, and the cross-appeal dismissed. A further appeal to the House of Lords (not yet reported) appears to have resulted in the reversal of the decision of the Court of Appeal, and a restoration of the original judgment of Mackinnon, J.

In the course of his judgment in the Court of Appeal, Scrutton, L.J., stated that in his view the option was not an agreement, but only "an agreement to make an agreement" which was not enforceable. This would have been his opinion apart from authority, but he was bound by a decision of the House of Lords in *May & Butcher* v. *The King*. Curiously enough, this apparently important case decided in 1929 was never reported, and the Lords' record and judgment had to be referred to. No reference to this decision was made on the original hearing before Mackinnon, J.

Scrutton, L.J., was one of three judges who heard the case of *May & Butcher* v. *The King* in the Court of Appeal, and he took the view, in that case, that there was a contract. His brothers, Sargant and Eve, JJ., were of the contrary opinion, and held that the arbitration clause which might have been resorted to for the purpose of fixing a price for the goods was of no effect, as there was no agreement.

In *Hillas* v. *Arcos*, Scrutton, L.J., confirmed his opinion expressed in *May & Butcher* v. *The King* that there was a contract, and added that he thought nine out of ten business men would agree with him; but he was bound as a judge to

follow the principles laid down by the House of Lords. Then followed this passage in his judgment :—

"But I regret that in many commercial matters the English law and the practice of commercial men are getting wider apart, with the result that commercial business is leaving the courts and being decided by commercial arbitrators with infrequent reference to the courts."

Greer, L.J., in the course of his judgment in the same case said : "The difficulty" (that is of enforcing a vague contract) "does not arise out of any imperfection in the rules of law administered in our courts ; it arises out of the difficulties inherent in the conception of contractual obligations—difficulties that can only be surmounted by a statutory provision that where the parties have not entered into a concluded contract the court shall have power to make for them the contract which in its view they would have made if there had been further negotiation to deal with matters not already decided." He added, "I think that although the defendants' conduct is wholly indefensible from the point of view of commercial morality, the point of law raised on their behalf is a good one, and this appeal is entitled to succeed."

These are judicial utterances expressed in restrained and considered language. The profound knowledge of commercial law and usage which Scrutton, L.J., possesses, and his wide experience, clothe the opinion expressed by him with almost the importance of an axiom. Greer, L.J., would approve of judges being invested by statute with the powers of an arbitrator, coupled with a species of purely equitable jurisdiction in certain cases, with power to supplement incomplete contracts and to enforce them if the intention of the parties can be ascertained.

There is a tremendous field of both statute and common law of universal application and unquestioned authority. But the vicissitudes in the *Arcos Case* show that on occasions new circumstances arise for decision by the judges which render consistency and co-ordination extremely difficult to maintain.

Consider some of the recent commercial cases of note ; for example, the *Bank of Portugal Case*, 100 L.J., K.B. 465. The great skill and learning with which this case was argued by counsel engaged, and the careful consideration of the facts and the law in the judgments of each succeeding tribunal, had their final issue in the House of Lords, when, by a majority of three to two, the court directed judgment to be entered against Messrs. Waterlow for £610,392. The decision of the Court of Appeal, consisting of Scrutton, Greer and Slesser, L.JJ., was rejected. In the three tribunals a number of varying judgments were delivered. In the court of first instance, Wright, J., directed judgment for the bank for £569,421. In the Court of Appeal (47 T.L.R. 465), Greer and Slesser, L.JJ., assessed the damages at £300,000 ; Scrutton, L.J., considered that the plaintiffs were only entitled to £8,922. In the House of Lords (48 T.L.R. 404), the Lord Chancellor and Lords Atkin and Macmillan held that the bank were entitled to judgment for £610,392, whilst Lords Warrington and Russell agreed with Scrutton, L.J., as to the measure of damages.

The principle of *Hadley* v. *Baxendale* was discussed in this case, and the method of its application was the subject of much diversity of opinion. Lord Atkin said : "For my part I cannot see the way to decide this case for Messrs. Waterlow without reversing a number of authorities which have governed our commercial law as I understand it from earliest times." Lord Russell commented on this. He said : "Personally, I am unconscious of any such assault upon authority . . . I confess, however, that I derive consolation from the knowledge that, in this alleged act of violence, I am abetted by one whose pre-eminence as a commercial lawyer is both well established and long established"—presumably a tribute to Scrutton, L.J.

Nine judges were occupied in the hearing of the various stages of the case. Of these, one gave judgment for £569,421 ; three considered the bank was entitled to not more than £8,922 ; two assessed the damages at £300,000 ; whilst three of the five judges in the House of Lords held that the bank was entitled to recover £610,392. It is true that this divergence of opinion on the part of the judges was on the amount of damages suffered by the bank, but the result can hardly be considered as conclusive.

Leon & Others v. *Casey* (147, L.T.R. 69), was an action relating to a marine policy, and in the course of the proceedings Mackinnon, J., ordered what is known as an affidavit of ships' papers. This order is of a far-reaching nature, and necessitates disclosure of documents to a much greater extent than under the usual order for discovery. The plaintiffs appealed on the ground that the case was one in which the ordinary order for discovery ought to be made. The Court of Appeal affirmed the decision of Mackinnon, J. Greer, L.J., began his judgment by saying that he had with much regret come to the conclusion that the order was one which Mackinnon, J., was entitled to make, and added : "No more unpleasant duty has to be performed by a judge than the duty of deciding a case in accordance with a previous decision of courts which are binding on him which he thinks, as applied to the facts of the case before him, is both unreasonable and unjust." Having regard to the expressions used by the same judge in the case of *Hillas* v. *Arcos, Ltd.*, referred to above, it would appear that the doctrine of "*stare decisis*" is likely to become less and less acceptable.

Scrutton, L.J., in the case of *Toogood & Sons, Ltd.* v. *Green* [1932] 1 K.B. 204, delivered a dissenting judgment in the Court of Appeal. The majority of the court had followed a House of Lords decision which they considered binding. Scrutton, L.J., said that as a "question of judicial comity" he was not prepared to treat this decision as overruling an express decision of the Court of Appeal in an earlier case on facts similar to those he was dealing with. The case of *Toogood* v. *Green* went to the House of Lords (1932 W.N. 132), with the result that the decision of the Court of Appeal was reversed, and Scrutton, L.J., was vindicated. He has indeed on many occasions shown the "bold and progressive mind," and has questioned the sanctity of the doctrine of "*stare decisis*."

It was originally intended in this paper to discuss the merits and demerits of arbitration by submission in commercial cases. Neither time nor space will permit of this. In terms quite consistent with those used in the *Arcos Case*, Scrutton, L.J., has expressed the view that there is little advantage to be gained by referring cases to arbitration, except in questions where knowledge of a particular trade was desirable. Generally speaking, he added, there could be no better qualified arbitrator than a judge of the High Court.

Arbitration has its uses, and also its place in the settlement of disputes ; but the conduct of a modern commercial arbitration on the lines of a court of law, with counsel, solicitors and witnesses, has become almost as expensive as a trial by a judge. If, in addition, the subject-matter is of a complicated nature, the right of appeal to the court on questions arising out of the arbitration may have the effect of delaying the final decision of the arbitrator for an unreasonable period.

In the case of *Produce Brokers Co., Ltd.* v. *Olympic Oil and Cake Co., Ltd.*, (114 L.T.R. 94), the House of Lords dealt with a point arising out of the award of an arbitrator. There were seven distinct stages of argument for decision, four of them in courts of law and three before the arbitration tribunal. The eighth stage was reached in the House of Lords, and it was there held that an arbitrator had power to determine the existence of a custom as part of a commercial contract. The case went back to the arbitrator, but another argument in court was necessary before his final award was accepted.

In the course of his judgment, Lord Loreburn accepted the right of parties to prefer "what some may consider the imperfect though expeditious wisdom of arbitrators to the slower and more costly justice of His Majesty's Courts," but regretted that in the case being dealt with the parties had to encounter the inconveniences of both methods, with the advantages of neither.

The case may, perhaps, be exceptional, but it illustrates some of the disadvantages of arbitration.

One must, however, recognise the great benefit to the commercial community of arbitration tribunals of the type which functions in connection with the Manchester Chamber of Commerce. During the existence of this tribunal, with its panel of merchants and trade experts, more than two thousand arbitrations have been carried through, with undoubted benefit to the local business men. The great majority of these arbitrations do not involve the consideration of points of law.

The energies of the legal profession should, therefore, be directed towards the accomplishment of reforms in legal procedure and practice. The judges are pursuing their difficult task with learning and skill, and in spite of difficulties such as those indicated in this paper, they still retain the full confidence of the commercial community. What remains is the duty of simplifying procedure, of reducing cost, of limiting appeals, and of expediting the hearing of cases. This accomplished, there will be no grounds for the apprehension felt by Scrutton, L.J.

A book has recently been published under the title "The Wisdom of Mr. Justice McCardie," which contains short reports of decisions by that judge in recent years. Few of the decisions quoted relate to commercial matters, or can be regarded as on a great scale. Indeed, most of them deal with social or domestic relations, but they exhibit in a rather remarkable fashion a power of reconciling and of applying to modern conditions otherwise out-of-date principles of law. They demonstrate the wealth of resource which lies in the structure of English law, and its capability of application to almost any novel conditions.

It is truly said of the law of England that it is a living system which is in a constant state of development and growth. To the present generation of lawyers this statement is very clearly illustrated in the issue of the second edition of "Halsbury's Laws of England." Within a period of twenty-five years, such remarkable changes and developments have taken place as to render obsolete much of the original edition, and to necessitate the complete revision and re-issue of this great work.

Its compilers have not attempted to reduce the huge mass of legal lore into a code, or a set of principles; they have recognised this to be an impossibility. But they have in a striking form given us a plan of the colossal edifice of English law with its maze of approaches, corridors and rooms, and have furnished a guide to the intricacies of its structure and arrangements. They have emphasised what was already known to lawyers, the hugeness, the antiquity, the inconsistency and the majesty of the structure. Its architecture is of many periods. Unlike a great cathedral, it has no harmony of design; yet, in spite of all its faults, it is an embodiment of the genius of successive generations in the life of a great nation.

Mr. C. L. NORDON (London) said that a distinguished member of the profession was accustomed to go to the Welsh hills and there to ask: "Is there peace?" and proceed to debate that abstruse problem with his fellow Druids. That was the problem that the President and Mr. Robson had tried to lay before the Society and the public. The answer was that in the matter of judicial administration there was not peace to-day. One might as well spin a coin as try to predict with any degree of certainty the direction in which judicial opinion would go. This was very undesirable, because the essence of judicial administration was some degree of certainty of the final result. He ascribed the trouble to the monopoly of the Bar, and said he would much prefer to consult the members of the Council of the Society than an inexperienced barrister who merely reached down dusty tomes from his shelf. Solicitors were powerless to intervene when the case that they had prepared with such care was mishandled by a barrister who had not, perhaps, read his brief, and who had no responsibility whatever for his failings. He suggested that The Law Society might set up a panel of arbitrators from among its members.

Mr. DOUGLAS GARRETT (London) deplored the waste of time and money spent in referring unsuitable matters to arbitration. This was less the fault of the law and lawyers than of clients who needed education. Clients believed that an arbitration clause enabled them to diddle the courts and lawyers, and that any matter could be decided smoothly in an hour for about £10. There was, of course, no foundation for this belief. He suggested that the arbitration clause should be excluded altogether from contracts or should be confined to matters of fact. The New Procedure Rules were a great help in this direction.

The President expressed his agreement with both speakers in the discussion.

Sir WILLIAM HART (Sheffield) read the following paper:—

THE LESSENING SHADOW OF THE LANDOWNER.

In the ordinary course this paper would have been submitted to the Society of Town Clerks at one of their meetings, but it has been decided, for reasons to be mentioned, to offer it for consideration at this Bristol Meeting of The Law Society. So far as I know, papers representing the views of members who either are or have been town clerks have been at least infrequent at The Law Society's provincial meetings, if not totally absent.

During the last two or three years the Society of Town Clerks has made various representations to the Council of The Law Society, which have been received with courtesy and considerate attention. The town clerks have also been allowed to hold meetings in The Law Society's premises. For all these favours, and possibly, who knows? in anticipation of favours to come, the Society of Town Clerks wishes, as a gesture of friendliness, to take a modest part in submitting a contribution to this meeting of The Law Society. With that in mind, I, though no longer a town clerk, have agreed to represent the Society of Town Clerks here by submitting a paper for your acceptance. My personal readiness to take up this task is prompted by much personal consideration shown to me by the Society of Town Clerks.

My purpose is to try to indicate, by way of typical illustration rather than by historical survey, the changing attitude of the legislature towards the owner of land in this country. And in my view the legislature in this respect does not act on its own initiative, but is subject to and carries into legislative action the mind of the general public, which is influenced by so many and so diverse movements. And this contention is supported by the experiences of the past, which show that there is a regular and on the whole consistent tendency in legislation, and therefore, in my submission, in public opinion, in the direction of limiting the owner's powers over his own land and imposing upon him the duty of subordinating his own rights and powers to the claims and rights of the community. This is not a question of party politics. The tendency to which I refer has manifested its direction and force in the legislative actions of all modern Governments in this country. Beyond and above all considerations of party, our Parliaments have felt themselves irresistibly driven in this direction of asserting and enforcing the paramount rights of the community over the personal rights of the owner of land.

I leave out of discussion the effect of taxation and death duties, which are leading to the break up of so many large and, indeed, moderate sized estates, for the reason that, as we all experience, they reach all citizens and are not confined to landowners, though their action on land may be the more striking.

It will be consonant with the need for brevity if my argument and illustrations are taken from the general class of legislation with which a town clerk usually finds his duties associated. The comments and suggestions which follow my sketch will, I trust, be of interest to members of the profession whose practices and experiences move on different lines from that of a local government lawyer.

I suppose it will generally be granted that up to, approximately, the beginning of the nineteenth century, the ownership of land in this country was accompanied by more privileges and fewer drawbacks than has been the case in later days, and I propose to show how from time to time since the commencement of the nineteenth century, the rights of ownership of land have been seriously lessened, the attitude and mind of the community in relation thereto having almost entirely changed. This change is most effectively illustrated by recent legislation.

May I take as my first illustration the compulsory expropriation of land required for public purposes? In the early years of the railway era about 100 years ago, powers were needed to enable promoters of railway schemes to acquire by compulsion the ownership of lands which were required for the construction of railway lines. Similarly, powers were required by bodies and persons desiring to construct reservoirs and other works for the public advantage, and there were other undertakings which could not be properly made effective without the acquisition of land held by private persons. In these circumstances Bills were promoted in Parliament for powers to acquire lands compulsorily, and there grew up a series of clauses which came to be recognised as common form and by reason of their length were embodied subsequently in the Lands Clauses Consolidation Act, 1845, and subsequent Acts. Promoters armed with special Acts which incorporated the provisions of the Lands Clauses Acts were enabled to take compulsorily from their owners and to assume ownership of lands comprised in their special Acts. In the light of the knowledge and experience of to-day, the terms on which landowners were compensated for this forcible expropriation were generous. Not only was full value payable for the lands taken from the owners, but it became the practice for valuers, those representing purchasers as well as those acting for the owners, to give a further allowance at the rate of 10 per cent. on the amount of their respective valuations as a solatium for compulsory purchase. In addition, the owner was entitled to compensation in respect of damages inflicted upon his remaining lands by reason of the severance caused by the works proposed to be carried out on the expropriated lands. The ingenuity of valuers also evolved a further item of claim for what became known as special adaptability, which was worked to good effect in favour of landowners on occasions of compulsory acquisition of lands for water works and other purposes.

This procedure, then, laid down the important principle that private ownership of land must give way to the needs of public utility services, and this compulsion was sweetened by liberal compensation which the expropriated owner was entitled to have awarded to him.

This advantageous position in which a landowner was placed when his land was required for public purposes received, however, a check when the Acquisition of Land (Assessment of Compensation) Act, 1919, was passed. All questions of disputed compensation when lands are to be acquired under statute for public purposes are now to be determined by official arbitrators who are debarred from making any allowance for compulsory acquisition, and are required to assess the value of land on the basis of the value in an open market to a willing seller. Special adaptability has been

reduced to meagre proportions, and any increment to value due to user that is illegal or detrimental to health is to be disregarded. Last of all, a strict code relating to costs was designed to check attempts to secure an inflated price. The clear purpose of the Act was to deter a landowner from seeking to secure more than a fair price for his expropriated land. He is to have no solatium for his distress at losing his paternal acres.

From a different angle one might refer briefly to the Public Health Acts in their relation to landowners. These Acts have grown from simple beginnings until by the ingenuity of local authorities, or, as I have sometimes heard it expressed, by reason of the evasions of the landowner himself, they compass him on every side. Since the great Public Health Act of 1875, itself the crown and climax of anterior legislation, came into operation, over 100 amending Acts have been passed, and in a large number of them the landowner has received marked attention, for which he has not always been grateful. He is required to submit plans of buildings he proposes to erect and to comply with bye-laws with respect to the foundations, walls and roofs of his buildings and the drainage therefrom. He may not permit his premises to be overcrowded, or allow them, while intended for human occupation, to fall into a state likely to be injurious to health, and he is subject to the liability to summary proceedings in respect of the multitudinous defects which come within the definition of a nuisance under s. 91 of the Public Health Act.

Looking at the question as one of principle, it was found necessary to control the erection of houses so as to secure stability, to minimise the risk of fire and to avoid the impairment of the health of the occupiers and their neighbours. Drainage, the proper construction of streets, and the control as far as possible of the unnecessary emission of smoke, are all matters in which the landowner's absolute control of his property is subordinated to what is believed to be the public good.

Lest it should be thought that it is only the local authorities who harry the landowner, I will merely mention the Agricultural Holdings Act, 1923, and the Landlord and Tenant Act, 1927. These Acts are outside the scope of my paper, but I may refer to the provisions in the latter Act which give a tenant in certain circumstances the right, apart from contract, to compensation for improvements made by him during the course of his tenancy and even for goodwill which his activities have caused to be attached to the premises the subject of the tenancy. Such provisions make a serious inroad into the right of the landowner to control his property.

I return, however, to my subject and propose to deal further only with the Housing Acts and the Town and Country Planning Act.

The Housing Acts affect two classes of real property, land occupied by houses and other buildings which in themselves or by reason of their surroundings are dangerous or injurious to health, and, secondly, land upon which new houses for the working classes are to be built. So far as the latter is concerned, it is not necessary to make further reference to it, unless it be land which has been or is comprised within the first class.

The necessity for housing legislation, which in a comprehensive form commenced with the Housing Act, 1890, is largely due to a want of recognition in the early days of the industrial revolution of the duty owed by the State and the employers to the workpeople who crowded into the towns for the sake of high wages and were not provided with adequate and sanitary housing accommodation. The Act of 1890 recognised that private effort would not and could not meet the evil, and imposed upon the local authorities the duty of improving the conditions of the slum dwellers either by the demolition of insanitary properties, no longer fit or capable of being made fit for habitation, or by the amendment of such houses as were capable of being amended without undue expense.

Generally it may be said that, especially in the case of dwelling-houses occupied by persons of the working classes, a considerable measure of interference on the part of the local authority is given by the Public Health Acts and the Housing Acts. This power is searching and wide in the case of premises used as common lodging-houses and houses let in lodgings, where not only are drastic requirements enforceable, but full powers of internal inspection of the premises at practically all times are afforded to the officers of the local authority.

The Housing Acts do not affect landowners generally, but so far as they deal with the evils of slumdom they concern vitally a limited class of landowners. The Act of 1890 provided that, in respect of the taking of lands compulsorily, the Lands Clauses Acts should apply with certain modifications, which to some extent anticipated the provisions of the Acquisition of Lands Act. Thus the assessment of price to be paid for lands comprised in unhealthy areas was to be the fair market value, without any additional allowance in respect of compulsory purchase, a proper deduction being made if the rental had been enhanced by reason of overcrowding or illegal uses, or by reason of the premises being defective in sanitation and repair. The germ of more advanced legislation was contained in a provision that if the premises were unfit and not reasonably capable of being made fit for human habitation, the compensation should be the value of the land and of the materials of the buildings thereon. The drastic nature of the legislation was further exemplified by the powers of closing and demolishing unhealthy dwellings and removing obstructive buildings which the Act conferred on local authorities. The right given to a landowner by the Lands Clauses Act to require an authority who wished to purchase part of his property to call upon them by counter-notice to take the whole was taken away in such cases.

It is when we turn to the Housing Act, 1930, that we see how considerable is the pressure to which the owner of insanitary property has become liable, and how this is applied to premises which have not altogether become insanitary. A local authority wishing to abolish an insanitary area may treat it as a clearance area or an improvement area. In the former case the whole of the condemned area is defined and all the buildings thereon are to be demolished, leaving only a cleared site. If the authority so determine, they may call upon the owner to clear the site, and in case of his default they may enter and demolish the buildings at his cost. In that case the owner does not receive any compensation whatever for the value of the buildings which have been demolished or for his loss of rental.

The local authority may also exercise compulsory powers in respect of adjoining lands, which though not necessarily containing insanitary buildings, may be considered necessary for the purpose of securing a cleared area of convenient shape and dimensions, or for the satisfactory development or use of the cleared area.

An improvement area is one in which not all the houses are bad. While demolition may be decreed in respect of houses actually unfit for habitation, premises in which the conditions are not irremediable may be dealt with by the drastic exercise of bye-law powers designed to secure the abatement of overcrowding and generally to secure the improvement of housing conditions and the subsequent maintenance of a proper standard of housing conditions therein.

Wide powers are also given by the Act in respect to single houses which are unhealthy. It is needless, however, to pursue further the powers which may be exercised in relation to unhealthy houses or unhealthy areas. It will suffice to point out that Parliament has not hesitated to confer and encourage the execise of extensive powers as against the owners of properties which in themselves are a menace to public health.

The Town and Country Planning Act, 1932, takes us away from the unsavoury slum, and is the latest illustration of the inroads made by legislation upon the management and control by a landowner of his own land. Town planning first received statutory recognition in 1909, when a Town Planning Act, obviously tentative in its nature, passed into law. From time to time the Act has been extended, and the legislation has been consolidated and further amended in the Act of 1932. This measure was passed for the purpose of securing the control of the development and planning of estates, whether large or small, and whether in urban or rural districts. It is also expressed to be intended to provide for the protection of rural amenities and the preservation of buildings and other objects of interest or beauty, and to facilitate the acquisition of land for garden cities.

The Act has been described as a bony skeleton, its fleshly parts to be supplied by orders and regulations to be made by the Minister of Health, and the vital breath and hue of health to be afforded by means of schemes prepared by the local authorities. One is struck by the many opportunities of repentance which the Act offers. Local authorities may act singly, or jointly through joint committees, and in case of joint committees their constitution may be revised and other authorities added to the committee. The most outstanding instance of the power to hark back is given to an authority under s. 24 of the Act. The section envisages the case of a landowner who has made a claim in respect of the injurious affection of his property by the proposals of the scheme, and, the matter having proceeded to arbitration, an award has been made in his favour. Even in that case the authority may give him notice of their intention to withdraw or modify provisions of the scheme which gave rise to his claim for compensation. It is true that in such cases the authority is required to prepare a modified scheme and obtain the Minister's approval for it, and also to pay the landowner's costs of the arbitration, but the power at such a late stage to

decline to proceed further because of an unacceptable award is noteworthy.

Schemes may be prepared for the whole area of the authority or joint committee or different schemes may be prepared for dealing with different parts of the area. Schemes may be modified or revoked by the Minister, whose approval is required before a scheme is valid. Supplementary schemes may be prepared.

This paper is far from being a commentary on the Act, but a few notes from the point of view of the landowner may, I hope, be permitted. The principle underlying the Act is that all land, wherever situate, is or may become the subject of town planning regulation. The procedure of the Act is based, firstly, on the making and completion of schemes, and, thereafter, on the carrying of the schemes into effect. Under the first head the authority, that is, a local authority or joint committee, passes a resolution deciding to prepare a town planning scheme, or adopting a scheme prepared by landowners. The resolution may affect any land in the neighbourhood of the authority, and therefore, incidentally, a landowner is liable to have his property included in a scheme prepared by an authority other than that in whose district his land is situate. But the resolution is not to become effective until it is approved by the Minister, and s. 6 of the Act lays down bewildering considerations to which the Minister is to give his mind before giving or withholding his statutory approval. In case the scheme includes land already built upon, he must apply his mind to one set of considerations, and if it comprises land neither built upon nor in course of development nor likely to be developed, a different set of considerations applies. Then a resolution to prepare a scheme may be revoked by a subsequent resolution, but the revocation also requires the approval of the Minister, who may refuse to give his approval except subject to such conditions as he may think fit to impose. Further, if the Minister gives his approval to a resolution revoking a scheme, he may impose a condition that a person whose property has been injuriously affected by the procedure under an interim development order or has incurred expenditure rendered abortive by the revocation of the resolution shall be entitled to compensation.

When a resolution to prepare a scheme has become effective, it must be published in the "Gazette" and locally, and a copy of the notice must be served on the person who is the occupier according to the last assessment to income tax and also upon the person shown as the owner. This provision will substantially lessen the work of the authority, who will not be under the duty of newly referencing the whole of the properties affected by the scheme and ascertaining the various interests of ground landlord, lessee, tenant and mortgagee, all of whom under procedure formerly adopted would have been entitled to receive notice. It suggests, however, the possibility of persons having substantial interests in land affected by a scheme not receiving direct notice of its provisions.

The Act also enables subsequent notices to be served or to have the same effect as if they had been served, by a simplified procedure. The authority is required to compile a register of names and addresses of owners and occupiers of lands within the area, the requisite information being obtainable from the surveyor of taxes on law stationers' terms. An owner may require to have his name and address registered, and probably for the first time in such legislation it is provided that an association representing owners of property within the district and a local association representing business or industry may require their names to be enrolled in the register.

It is, however, less on questions of procedure and more on questions of substance that the landowner will find himself concerned; for a scheme under the Act, if it comprise his property, may affect it seriously. Let us turn to some of the provisions that a scheme may or must include, premising that when proper planning or development calls for it, the scheme "may provide for suspending the operation of any provision, whether contained in a statute or in an order, bye-law or regulation, under whatever authority made, in so far as that provision is similar to or inconsistent with any of the provisions of the scheme" (s. 11). Bearing this over-riding power in mind, we may turn to the Second Schedule to the Act to find what are the principal provisions which are considered to be requisite for prohibiting or regulating the development of land in the area affected by the scheme. These are too numerous to be set out in this paper, but they may be said to cover practically all known means of converting open land into an ordered and regulated building scheme, with ample reservations for amenities. The Schedule includes such matters as streets, roads and other ways, the division of highways, the extinction or variation of private rights of way and easements. Buildings and open spaces, private or public, which are essentially mundane, may be provided for and regulated, as also the reservation of sites for churches and of land for aerodromes, which may together or separately lead our thoughts to higher things. The preservation of even single trees and the protection of land in respect of advertisements may find honoured place in a scheme (ss. 46 and 47). Sewerage and sewage disposal, refuse disposal, lighting, water supply and auxiliary works fall within the purpose of a scheme. Then powers for the demolition of obstructive buildings and powers of entry and inspection are to be provided for. Also, and I will not take this part of the subject further, the Act declares that provisions in a scheme with respect to buildings and building operations may include provision for prescribing the space about buildings, the limitation of the number of buildings and even the regulation of the size, height, design and external appearance of buildings, and also for imposing restrictions upon the manner in which buildings may be used. The power to regulate the design and external appearance of buildings is, so far as I know, new to our general legislation, and in respect of this power the Act affords a right of appeal, either to a court of summary jurisdiction or to a special tribunal, on the ground that compliance with the requirement of the authority would involve unreasonable cost having regard to the character of the locality and the neighbouring buildings. This limitation on the right of appeal only emphasises the far-reaching nature of the powers of a scheme.

I will not weary you with more details. The picture is an attractive one—a whole countryside built up or a town re-cast and developed on harmonious and pleasing lines. The landowner must subordinate his own ideas and the development of his own property to the larger ideas which the scheme of the future adumbrates. He may ask how is he to be protected in these novel circumstances, and the answer is—by his own sagacity, by the astuteness of his professional advisers, by the public spirit and fair-mindedness of the authorities (at this he may pause for a moment), by the wide powers of supervision and control vested in the Minister of Health, by the safeguard of tabling schemes in Parliament, and lastly, by recourse to the provisions for compensation which the Act contains in his favour. These compensation provisions will need to be carefully perused. It is not every Act or proposal that gives a right to compensation, and where compensation rights are found to exist they must be claimed in due form and within a limited period. And beyond this landowners should not overlook the provisions for recovery of betterment from owners whose lands are increased in value by the coming into operation of a scheme or by the execution of works by an authority under the scheme. In such cases the authority is entitled to claim 75 per cent. of the increase in value. The procedure laid down and the variety of possibilities provided for suggest considerable complication in practice.

The Act is a delightful one to read, though there may be some who will think differently. It bears the marks of pressure on the part of many interests and views. It is probable that some of its safeguards will be found either unnecessary or unworkable, and the legislation may have in future to be amended. But it is, for the purpose of this paper, the strongest assertion yet known of the supreme power of the State in time of peace to regulate and control the development of land in such a way as, if need be, entirely to over-ride the wishes of the landowner. The compensation he will receive for interference with his rights will, it may be hoped, be adequate and satisfactory.

A few observations may be offered in conclusion. I see no indication, in the drastic legislation affecting landowners to which I have briefly drawn attention, of any desire for confiscation of property. Opinions may differ as to the extent to which compensation for compulsory purchase or injurious affection is adequate or of sufficiently wide application, but the evidence, I submit, is that the desire for fair dealing between the authority and the landowner is abundantly shown even in the Town and Country Planning Act, the latest and in some respects the most far-reaching legislative interference with the rights and powers of landowners.

Secondly, I do not see any movement towards the nationalisation of the land. Such a project has been urged at times as one of the incidents of Utopia, and reform of the land laws might well have proceeded in that direction. But in fact it has not. Even in the case of land which by reason or archæological or other special interest requires protection from risk of spoliation, legislation does not proceed in the way of confiscation or compulsory acquisition. The principle of our legislation as to ancient monuments is that the owner is to be left undisturbed so long as he takes due care of property which is of national importance or interest, and this view is emphasised in s. 17 of the Town and Country Planning Act. Should he begin to threaten or actually interfere, the Office of Works has power at once to intervene, but does not proceed to buy. Even where land for various reasons ought to be safeguarded against improper use or to be dedicated to public

use and enjoyment, the most usual and acceptable way is not to transfer the ownership to the State, but to vest it in the National Trust. The State does not seek to be universal landlord.

At the same time, the growing necessities of the State for the development of its services call for the vesting in the State of considerable portions of land. Take, for example, the War Office and the Post Office. These departments, like others, are constantly acquiring lands for their own purposes. In the aggregate the extent of land owned by the State is considerable. The Post Office has not shown itself unwilling to dispose of lands which have become superfluous to departmental needs, and it may be assumed that lands owned and retained by the Postmaster-General are required for departmental purposes.

Similarly local authorities are becoming owners of extensive areas of land. The area of parks and open lands in the country which are vested in local authorities is considerable. Cemeteries are being acquired and taken out of commercial use for all time. In course of time in all probability the memorial gravestones will be levelled and the surface used for purposes of rest and recreation. The purchase of land is desirable for so many of the duties of the local authorities that they are steadily acquiring and retaining lands of increasing extent. But they are not becoming landowners on any such scale as would give rise to concern that they might become owners of practically the whole of their area. It has been the practice of Parliament to limit to specified dimensions the extent of land which a local authority may acquire and hold, and although this restriction has become somewhat relaxed Parliament has not abandoned its control of the land-purchase ambitions of local authorities. It cannot, I think, be urged that local authorities are purchasing and holding lands to an unreasonable extent, and their action is not a menace to private enterprise.

Indeed, taking the question as a whole, I think it may be reasonably contended that private ownership is not unfairly affected by this class of legislation. The practice of eminent domain is in fact of long standing though its name may be comparatively new. It dates back at least to feudal times. It is essential and must be exercised to the full if need be in time of war. And in these days of a complex civilisation it is really requisite in other times.

The State has the right for national or other supereminent purposes to require the owner to surrender the whole or part of his ownership. This, under our legislation, is not done at random. Due notice—admittedly in recent times of short duration—must be given to the owner so that he may have opportunity of protesting against deprivation, and the compulsory expropriation is solaced by payment of compensation on at least a reasonable basis. It is not only reasonable but imperative that landowners should conform to all legal requirements in the interests of public health. They must not use their own property so as to injure the health of the public generally. Very unwillingly was the obligation admitted and many have been the complaints that the requirements of local authorities were unreasonable and resulted in excessive cost being imposed upon landowners. Admitting for the sake of argument that this may at times have been the case, it may on the other hand be asserted that the exercise of public health powers over built-upon land has been wisely carried out and has immeasurably improved general health conditions. The powers of the Housing Acts in relation to insanitary properties may seem at times to be harsh. To require a property owner to demolish houses without compensation and to limit his future use of the land on which they have stood is an extreme instance of legislative action in relation to land. We often hear of the hard case of the working man who has invested his life's savings in cottage property or the unhappy widow left with the rents of such houses as her sole support, who are the victims of this legislative oppression. But it is singular that such persons do not receive the sympathy of their own class. The workers are the first to urge that the unhappy investor has often been the victim of his own greed, and needs no sympathy or allowance, even though his high rate of return disappears. The recent town planning legislation will, if at all, be open to criticism on its details rather than on its principle. The community as a whole is interested in the orderly and seemly development of estates, in the definition of uses to which land may be put, and in the provision of buildings which are a pleasure to the eye. The prevention of future ugliness in building and lay-out is imperatively desirable, and the removal of existing blotches, whether in the country or in crowded urban areas, should be undertaken as soon as financial limitations will permit.

Indeed, the case for legislative interference may be stated in a slightly different way. In the first place, it is necessary that the unsatisfactory and obstructive landowner should be coerced and if need be deprived of his property. And in the second place the Legislature is only following the example of a good landlord in the management of his estate. About the beginning of the nineteenth century, when the development of London was being started through building leases and the sale of freeholds, owners sought for means to control development and user; hence the long common form clauses in leases and the rule in *Tulk* v. *Moxhay*. But the difficulty that some landlords did not care, or that the boundaries of a good landlord's estate might be too confined, made this an incomplete solution when a general development was desired, and thus Parliament has given to the local authorities, as best qualified to exercise general control, wide powers of controlling development, borrowed in their nature and to some extent in their form from the practice of good landlords, and, to avoid the difficulty as to boundaries, has also conferred powers (see, e.g., s. 25 (1) (*b*) of the Town and Country Planning Act, 1932) to enable the authorities to acquire lands to make boundaries fit in with good planning.

It may be contended, then, that the class of legislation which I have brought to your notice is based on sound principles. It is also inevitable. Modern standards of communal duties and also in questions of taste demand it. It is for the legal profession, which will be so largely interested in the enforcement of these laws, to see to it that the rights of the landowner are properly protected, so that the lessening shadow of his authority over his own land may be acquiesced in by reason of the knowledge that the curtailment of his powers is adequately compensated for both in money and amenity, that incidentally it preserves him from the unfriendly and sometimes hurtful user to his own detriment of his neighbour's land, and, last of all, that he is contributing in due share, and not above what can reasonably be required of him, to the amenities and improvements which shall make this country a more pleasant land to live in.

Sir ROGER GREGORY said that he had recently had an opportunity of considering this question as a member of the Lord Chancellor's committee on the powers of ministers. It was probably necessary that a man's right to do as he wished with his own property should be varied, but the power to vary it was being withdrawn from the courts and vested in Ministers. If those powers were exercised by the Minister in a really judicial way, their withdrawal from the courts would not matter, but the practice was to send down an official to make an enquiry in the district; his report was not seen by any party to the dispute, and he might well be influenced through previous contact with the local authorities. The report went to the Ministry, where it was probably criticised by some higher official, whose decision would be adopted by the Minister, sometimes in accordance with a preconceived policy entirely unrelated to the evidence. The result was that the landowner did not often get a fair hearing, and even if he got a fair hearing he did not think he had got it. It was just as essential, when a man's rights were in question, that he should think he had a fair hearing as that he should actually get it. The Ministry did its work well, but was almost entirely lacking in the judicial spirit, and there was danger of unjust interference with the rights of owners.

Sir HARRY PRITCHARD referred to a possible misapprehension from the words of the paper. The Acquisition of Land Act, 1919, the cynical Act which provided that a man who had been deprived of his property against his will should still be termed a willing vendor, did not cover expropriation by railway companies, and in the few remaining cases where a man's land was taken by a railway company he would still be entitled to the 10 per cent. increase of compensation for compulsory sale. His compensation would, however, be assessed by a jury.

Mr. J. BOWMAN asked what safeguards were contained in the 1930 Act to prevent the University of Bristol from being cleared as a slum area.

(*To be continued.*)

The Banquet.

The Bristol Incorporated Law Society, with Mr. H. REGINALD WANSBROUGH in the chair, entertained The Law Society to a banquet at the Victoria Rooms on Tuesday evening.

After the company had honoured the toast of "The King," Sir REGINALD LANE POOLE proposed the health of "Bench and Bar." With the Bench, he said, he coupled the name of Lord Merrivale, whom he had known for many years in many circumstances: as a barrister, a public servant and a friend. The judicial Bench, he remarked, bristled with constellations from the Western Circuit, and he enumerated, besides Lord Merrivale, a number of those who had recently been elevated to the Bench. He deeply regretted that the Attorney-General was not present to reply. The Bar had always been good friends of The Law Society; they had an historical and a

fine record. They subsisted on the meagre contributions meted out to them by solicitors; Sir John Simon or Sir Patrick Hastings, if asked their opinion, would say that they had great difficulty in making both ends meet. Sir John Simon's reason for temporarily discarding the Bar was that he wanted to save money: he had gone to Geneva in order to establish a foreign domicile and intended to reside there for a period exceeding six months in the year; he occupied himself with preaching the gospel of peace entirely contrary to the best traditions of his profession. Solicitors and barristers were naturally great friends because they shared in the intimacy of their clients' secrets and were bound by the common portion of both branches—professional honour.

Lord MERRIVALE, in reply, said that the toast linked up the City of Bristol, the profession of the law, and the Bench and Bar. Bristol was a fine city, even for a gathering of The Law Society, and it was necessary to see it in order to realise the place it held in the realm. It largely owed this position to the high value which it set on law and order. It had for long periods of history possessed its own home-bred laws, administered by a body of professional men whom it knew. In its association with the law, its interest in those responsible for the practical and immediate administration of the law, and in its contact with the Western Circuit, Bristol had come to an appreciation of Bench and Bar which those communities deserved only if they played their appointed part as it should be played. Lord Merrivale touched on famous historical figures of the Western Circuit, which, he said, could not exist without the local legal profession. Western solicitors enjoyed the confidence of the community; he had known for longer than he could remember Mr. Reginald Wansborough, and another man with a comely figure, a frank and generous mind, upstanding and straight: James Inskip. Nobody who had known that man had failed to appreciate him. To-night John Inskip was Lord Mayor, Tom Inskip was Attorney-General, and their brother discharged the sacred duties of a Bishop. Bristol took a proud interest in the Inskip family.

In Defence of the Circuit System.

Mr. STUART BEVAN, also in reply, wished it to be understood that he was acting as a "devil." (Laughter.) He regretted as much as the company that they were not to have the unique experience of hearing three distinguished brothers speak at the same assembly. He had read in an evening paper that a suggestion had been made before The Law Society that the circuit system should be abolished. He had gathered from the report that the proposal had not been enthusiastically received. He could not claim the Western Circuit as his home, since from want of recognition by the solicitors of the circuit a generation ago he had never played any prominent part in its life. He had done his best for two years but had wooed them in vain, and cold shoulders had been turned. Whereas in these days charity would doubtless have been bestowed on him, appreciation had then been properly lacking. He deplored, however, with every member of the Bar, circuiteer or non-circuiteer, any suggestion to abolish the system. It made for unity and friendship between solicitors and barristers, bringing them into an association impossible in the busy life of London. He felt that if he had been present at such a meeting he would have become eloquent on the subject for the first time in his life.

Mr. Justice HAWKE, in proposing the toast of "The City and County of Bristol," complained that Lord Merrivale had already done it for him, but said that he was much better qualified. He had had the privilege of driving down Park-street in a coach with C-springs and no brakes, and had placed such confidence in the City of Bristol that he had felt no fear (nor favour). He had enjoyed the hospitality of the Mansion House and had had bestowed upon him the famous "Milk" of human kindness.

The LORD MAYOR, in reply, said that it had been his duty and privilege on many and varied occasions to respond to the duty of his city, but he had never done so with such happy feelings as he did that evening in the company of so many members of the profession to which he had the honour to belong. He was greatly pleased that this visit had been paid in his year of office.

Bristol was proud that The Law Society had chosen a Bristol solicitor, who was held in high esteem in a circle far wider than that which embraced his brother solicitors, to be its President. He congratulated the University on finding itself able at last to confer the degree of Doctor of Laws on a man who was in fact a lawyer.

Some Recent Losses.

Mr. Justice EVE proposed the health of "The Law Society." Sir Reginald Lane Poole, he said, had risen with happiness; Lord Merrivale had risen with pride; but he rose all of a flutter, for he had not expected to have to address the ladies in the gallery, and had prepared a very different speech. He congratulated Sir Claud Schuster on his recovery from his recent accident, and spoke with deep regret of several members whom the profession had lost during the current vacation. His old friend Master Archibald Keen had spent all his service as a Master in the speaker's chambers, and had not been there long before he had earned the respect and affection of everyone. Mr. Charles Bradburne, the Official Solicitor, had been a man of untiring industry, who had toiled on at his duties under the great disadvantage of failing health and physical pain, duties increased largely by the legislation affecting the adoption of children; he had died at his post, which would be a difficult one to fill. Sir Herbert Gibson, a former President of The Law Society, had been an old college friend of Mr. Justice Eve, and had shared with him a pleasant visit to Nottingham some years before. Finally, the whole profession would mourn its friend Sir Benjamin Cherry (hear, hear), of whose activities and work it was superfluous to speak. He, too, as it now appeared and as had been known to some of his intimate friends, had pursued his studies and his work under the great disadvantage of physical pain. He had originally been a pupil in the speaker's chambers, but after he had been there for the usual period he had passed on to the late Mr. Wolstenholme, having made up his mind to follow, if possible, that distinguished man's work in preference to the rough and tumble practice with which he had become acquainted in Mr. Justice Eve's chambers.

Twenty years ago, continued the speaker, he had proposed the same toast at a similar gathering, and Sir Edward Fry, who had been his companion during the dinner, had somehow given him the impression that he had laid it on a little thicker than The Law Society merited. He might have spoken a little enthusiastically, but the position had been somewhat exceptional. He had only been elevated to the Bench some few years, and among those present had been many of his clients. He had not been a judge long enough to forget their goodness, their forbearance, and their ever-ready encouragement. He had, however, the useful asset of a retentive memory, and to-night he was as conscious of his debt to them as he had been a score of years ago. Moreover, the accumulated experience of those years had increased his respect and confirmed his confidence in The Law Society, a confidence which was shared by the community. No one who had ever taken the trouble to ascertain the facts could truthfully assert that The Law Society had ever stood in the way of real reform. Its attitude was: "First of all let us understand and appreciate the abuse which this reform is calculated to remove; next, explain to us the nature of the reform and satisfy us that it will in fact remove the abuse; and thirdly, satisfy us that its adoption will not lead to more trouble in other directions than are contemplated by those who put it forward." He had seen many reforms which, subjected to such an examination, had turned out not only inadequate, but fallacious and harmful. Within recent years Acts of Parliament had found their way to the Statute Book that from the very first had been dead letters. The Law Society did great service in submitting every great proposition to the ordeal he had indicated.

Mr. C. E. BARRY, president of The Law Society, in reply, said that his dream of many years of being president had been fulfilled, and he hoped that the Society would never regret its choice. He was especially happy to be president in a year when he was welcomed as a visitor to the city in which he had lived for so long. Speaking of defaulting solicitors, he urged that their number was infinitesimal. Regulations, he said, could deal only with the man who drifted into default through inadvertence or carelessness, but such men made up the large majority of cases. If a man was determined to be a rogue, neither Act of Parliament nor regulation would stop him. The work of reform, he said, reminded him of the Irish local authority which had decided to build a new court-house and had passed three resolutions: that a new court-house should be built, that it should be constructed from the material of the old court-house, and that the old court-house should not be taken down until the new one was ready!

Mr. REGINALD WANSBROUGH, the Chairman, read a telegram from a man whom he described as an ornament to the Western Circuit and a great treasure to the solicitors of the last decade: "Every good wish for a successful evening —John Simon." In proposing the toast "Our Guests," he said that his prepared speech, in which he had intended to tell the guests what nice-looking and law-abiding gentlemen they were, had been rudely compromised by an announcement in the *Daily Mail* that the Lord Mayor and the Sheriff were to be charged with murder, and by the realisation that he was to sit down to dinner with two capital felons instead of two capital fellows. He did not believe it of the Lord Mayor, but he thought it extremely likely that Mr. Stanley Gange, who had never during the term of his office had the opportunity of

assuaging his thirst for blood by making the 8 o'clock morning call on which sheriffs were said rather to pride themselves, had come across a poor, wretched creature alone on Salisbury Plain and offered him up as a sacrifice on the altar at Stonehenge. According to the toast-list, he himself was to be the next sacrifice, and he urged the company not to believe a word that Mr. Gange said. Bristol solicitors were, he said, delighted with their new Recorder, whose amiable nature consoled them for the loss of Mr. Justice du Parcq, who had administered justice in the most delightful and courteous way. Members of the Western Circuit also remembered with pleasure the delightful way in which Mr. Justice Hawke had done his work at the Bar. After some reminiscences of Recorders he had known, he enlarged upon the poverty of solicitors. Since the passing of the Poor Solicitors' Act, by which their 33⅓ per cent. had been reduced, while they worked for the poor for nothing they worked for the rich for something less. Those members and ladies who went on the excursion to the Cheddar Gorge would be reminded how near they were to the rocks.

"The Perfect Host."

Mr. Justice du Parcq, in reply, said that the Recorder was not the only "devil" there that night, and that his appeal was entirely specious. Mr. Bevan was to have replied to this toast, but had accepted a returned brief from the Attorney-General and left his clients, the guests, in the lurch, to be defended by the speaker with no preparation at all. The Bristol Law Society and its President amply fulfilled the criterion of Max Beerbohm for the perfect host: a man who asks his guest not "Will you have a liqueur?" but "What liqueur will you have?" That solicitors were also the perfect guests had been demonstrated by an incident during the visit of the Bar and representatives of The Law Society to America and Canada. At the end of a very happy tour the party had arrived at New York, and the present gathering could well imagine the feelings of their friends and the expression on Sir Roger Gregory's face when they had encountered a notice saying "Canvassers, hawkers and solicitors are not admitted to this hotel." Even in the agony of the moment Sir Roger Gregory and those who had been with him had not shown the slightest dismay. Mr. Justice du Parcq said that he had spent a very happy time at Bristol and hoped to return there before long as a judge of assize.

The Bishop of Barking also replied. He claimed to have been a kind elder brother to the Lord Mayor and the Attorney-General. He appreciated the difficulty that their host had encountered in deciding the order in which the three brothers should go in to bat on the toast list. He had sat with his pads on for a long time in great trepidation and he now saw persons with rods and ropes anxious to take possession of the pitch, and others crowding round wanting him to return to the pavilion, but he could trust the closing batsmen to give a good account of themselves. He was grateful for the President's suggestion that "The first shall be last," but he suggested that the real motive had probably been "When men have well drunk, then that which is worse."

Mr. Stanley Gange, as Mr. Reginald Wansbrough had anticipated, made the proposing of his health the occasion of a scurrilous attack upon his reputation. Their President had, he said, after scaring the crows off the patriarchal acres at Stonehenge—which he arrogantly claimed as the mausoleum of his family—come to Bristol with a smattering of law and set up an office over a public-house. One advantage, the law being so dry, was that he could always obtain refreshment, and another was that the number of people seen entering the premises had induced others to think that this lawyer had a tremendous practice. The Law Library, the speaker was informed, had a few books bound with human skin; he was not surprised, for Mr. Wansbrough skinned his clients and either buried them on the premises or sold them to the hospital for what he could get. He could tell many stories about Mr. Wansbrough, some canonical, some apocryphal, and some a combination of both, but nobody in Bristol was held in higher esteem, not only by his own profession, but by everyone. He had come with a smattering of law and he now carried a cargo of deep regard and warm affection.

The Chairman, in reply, pleaded guilty.

Among those present were:—Lord Apsley, M.P., The Hon. Mr. Justice Hawke, Sir Bernard Bircham, K.C.V.O., Sir R. W. Dibdin, Sir Dennis Herbert, K.B.E., M.P., Sir Roger Gregory, Sir C. H. Morton, Sir Harry G. Pritchard, Sir Seymour Williams, the Bishop of Barking, the Bishop of Malmesbury, the Archdeacon of Bristol, His Honour Judge Parsons, K.C., His Worship the Mayor of Bath (Councillor H. Chivers), Alderman E. M. Dyer (Chairman of Docks Committee), Mr. Roy Baker (United States Consul), Mr. R. H. Bernays, M.P., Mr. W. G. Burrough (President, Somerset Law Society), Dr. J. R. Charles (President, Medical Association), Mr. W. A. Coleman (President, Solicitors' Benevolent Association), Dr. A. H. Coley, Mr. E. R. Cook (Secretary, Law Society), Mr. R. D. Cripps (President, Liverpool Incorporated Law Society), Mr. C. T. Culverwell, M.P., Mr. Walter H. Day (President, Kent Law Society), Mr. E. F. Eberle (Master of Society of Merchant Venturers), Mr. G. F. Eberle (Junior Vice-President, Bristol Incorporated Law Society), Mr. Josiah Green (Town Clerk of Bristol), Mr. T. W. Hopkins (President, Leeds Incorporated Law Society), Mr. W. G. Howell (President, Cardiff and District Law Society), Mr. F. G. Lefroy (President, Bournemouth and District Law Society), Mr. N. Ker Lindsay, M.P., Mr. D. Llewellyn (President, Bridgend District Law Society), Mr. W. F. Long (President, Bath Law Society), Dr. T. Loveday (The Vice-Chancellor), Mr. C. G. Maby (the Chief Constable), Mr. C. E. Martin (President, Hampshire Incorporated Law Society), Mr. C. G. May, Mr. H. W. Michelmore (the Mayor of Exeter), Mr. H. A. Page (President, Wolverhampton Incorporated Law Society), Mr. T. E. Penny (President, Hertfordshire Law Society), Mr. A. E. Perkins (President, Bristol Chartered Accountants), Mr. F. Richardson (Senior Vice-President, Bristol Incorporated Law Society), Mr. J. W. Robson (President, Manchester Incorporated Law Society), Mr. Herbert H. Scott (President, Gloucester and Wilts Incorporated Law Society), Mr. G. T. Simpson (President, Nottingham Incorporated Law Society), Mr. Clare Smith (President, The Institute of Chartered Accountants), Mr. H. B. Stone (President, Bristol Chamber of Commerce), Mr. Charles Thomas (President, Bristol Savages), Mr. Norman Whatley (Headmaster, Clifton College), Mr. J. P. Whittingham (President, Chester and North Wales Incorporated Law Society), Mr. W. H. Wise (Clerk to the Bristol Justices), and Mr. A. H. Woodward (the Sword Bearer).

Legal Notes and News.

Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. Linton Thorp, K.C., M.P., be appointed Recorder of Saffron Walden and Maldon, to succeed the late Mr. C. E. Jones. Mr. Thorp, who was called to the Bar by Lincoln's Inn in June, 1906, has held legal appointments in Egypt and was the last British judge of the Supreme Court, Constantinople, in 1921–24.

Mr. T. Hollis Walker, K.C., has been elected chairman of Lindsey Quarter Sessions, in succession to Mr. Frederick Acton, who is in his eighty-eighth year and has retired.

Mr. Philip J. Hodges, solicitor, Town Clerk of Bacup, has been appointed clerk to the Ellesmere Port Urban District Council. Mr. Hodges was admitted a solicitor in 1926.

Councillor W. Emyr Williams, a solicitor and chairman of the executive committee of the Royal Welsh National Eisteddfod for next year, is to be the new Mayor of Wrexham.

Professional Announcements.

(2s. per line.)

Messrs. Benham, Synnott & Wade have pleasure in announcing that as from 1st October, 1932, they have admitted into partnership Mr. H. R. C. Hall, who has been associated with them for some years. The name and address of the firm will remain unchanged.

The Solicitors' Mortgage Society, Ltd. (formed by Solicitors for Solicitors), invites particulars of Funds or Securities. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. George Paris Sandeman, solicitor, of Kensington-square, W., left unsettled property of the gross value of £50,308, with net personalty £41,026. He left: £300 4 per cent. preference stock of the Canadian Pacific Railway to the Royal Hospital for Consumption and Diseases of the Chest, City-road, E.C.; £200 such stock to the Solicitors' Benevolent Association; £100 and his bees, beehives and appliances to his gardener—Drew; £50 and a life annuity of £104 to his house-parlourmaid, Mabel Watson; six months' wages to each servant not specifically mentioned in his will if of one year's service; £50 each to Messrs. Ivory, Groves, Gaved, Tibbs, Sandiford, Pratt, and Wright, clerks with his late firm; his shares in the Borough of Finsbury Permanent Building Society equally between his late clerks, Charles B. Simpson, and — Marsh, sen.

Mr. John Robinson Hobson, solicitor, of Maryport, Cumberland, left £17,631, with net personalty £17,259.

Mr. Henning Corker, solicitor, of South-street, W., and Cork, left £11,130, with net personalty £10,660.

Mr. Bruce Lamb, solicitor, of Andover, left £9,779 (net personalty nil).

Mr. Lewis Albert Bobbett, solicitor, of Bristol, left £39,041, with net personalty £29,079.

Mr. Thomas Clarke, solicitor, of Queen-street, E.C., left £36,951, with net personalty £32,072.

Mr. Henry Schofield, solicitor, of Blackburn, left £17,137, with net personalty £16,076.

Mr. John Graham Thomson, solicitor, of Edinburgh, left personal estate valued at £5,013.

Colonel Charles John Huskinson, O.B.E., T.D., solicitor, of Newark-on-Trent, left estate of the gross value of £35,332, with net personalty £32,435. He left £50 to the C.O., 8th Battalion Sherwood Foresters, in trust, to apply the income in paying the verger for the upkeep of the chapel in the parish church of St. Mary's, Newark-on-Trent; £100 to the Old Comrades' Association of the Sherwood Foresters; £100 to Epperstone Institute.

Mr. Robert Marquis, solicitor, of Bishop Auckland, left £13,456, with net personalty £9,333.

Mr. Charles Francis Saunders, solicitor, of Crewkerne, left £16,827, with net personalty £13,460.

Mr. William Lea, solicitor, of Totland Bay, Isle of Wight, left £14,728, with net personalty £10,714.

Mr. Charles Lord, retired solicitor, of Buxton, left £49,746, with net personalty £46,540.

Mr. Frank William Martin, solicitor, of Nottingham, left £64,126.

Mr. Henry Dugdale Sykes, solicitor, of Enfield, left estate of the gross value of £6,317, with net personalty £5,524. He left £100 to his confidential clerk, Dover Ernest Judd, "as a slight acknowledgment of his long and faithful service to me."

Mr. Robert Allan McNab, barrister-at-law, of Penwortham, Lancs, left £22,330, with net personalty £19,780.

Mr. James Ridley Burnett, solicitor, of Carlisle, left £9,512, with net personalty £5,814.

Councillor Albert Henry Franklin, J.P., solicitor, of Headington, Oxford, left estate valued at, so far as can at present be ascertained, £27,582, with net personalty £22,729.

Mr. William E. Gray, solicitor, of Teignmouth, left £21,810, with net personalty £20,204.

Mr. Francis Henry Whitehouse, retired solicitor, of Coton Hill Hospital, Stafford, left £5,416, with net personalty £3,878.

Mr. William May, solicitor, of Send, Surrey, and Austin Friars, E.C., left unsettled estate already valued at £197,083 and settled land valued at £19,010, making a total value of £216,093.

Mr. William Mercer, retired solicitor, of Sheffield, left £7,222, with net personalty £7,114.

Mr. George May, a seventy-two-year-old retired solicitor's clerk, who died last Monday at Caterham, Surrey, has willed that his body should be handed over to St. Bartholomew's Hospital "in the interests of science." A brother stated that there would be no funeral.

On medical advice, Mr. T. Hollis Walker, K.C., has resigned the Chairmanship of Kesteven and Lindsey Agricultural Wages Committee, and Mr. G. A. Cave-Orme has accepted an invitation to succeed him.

CERTIFIED ACCOUNTANTS.

The next examinations of the London Association of Accountants will be held on 6th, 7th and 8th December in London, Glasgow, Edinburgh, Newcastle, Birmingham, Belfast, Cork, Dublin, Leeds, Sheffield, Manchester, Liverpool, Cardiff, Bristol, Nottingham, Hull and Plymouth. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the office of the Association, 50, Bedford-square, London, W.C.1.

FLYING SOLICITOR.

Mr. T. Anderson Davis, a St. Albans solicitor, recently went by an air taxi from Hatfield Aerodrome to Bishop's Stortford in order to keep appointments in courts thirty miles apart within an hour. He defended in two cases before the St. Albans City Justices, who sat at 10 a.m., and he had to appear to prosecute for the police in a motoring case at Bishop's Stortford at 11 o'clock the same morning.

CHADWICK PUBLIC LECTURES, 1932.

The autumn programme of the twentieth annual series of Chadwick Public Lectures begins on Thursday, 20th October, at 5.15 p.m., when Sir Humphry Rolleston, G.C.V.O., K.C.B., M.D., will repeat in the Theatre of the Royal United Services Institution, Whitehall, the Chadwick Lecture he delivered at the Académie de Médecine in Paris last April, on "The Pioneers and Progress of Preventive Medicine." Sir William Collins, Chairman of the Chadwick Trustees, will preside for Sir Humphry. All Chadwick lectures are free and no tickets are required for admission. Further information may be obtained of the Secretary, Mrs. Aubrey Richardson, O.B.E., at the offices of the Trust, 204, Abbey House, Westminster.

LONDON SOLICITORS' GOLFING SOCIETY.

The results of the Autumn Meeting of the London Solicitors' Golfing Society, held at Beaconsfield Golf Club on Thursday, 29th September, were as follows:—

Best Medal Score.—H. W. Pritchard, 85—12=73. Richardson Sadler Cup.—J. L. de la Cour, 81—6=75. Nine Holes Prizes.—E. A. Swatton Brooks, 38 (scratch); R. G. Thorp, 43—4½=38½; R. Woolf, 40—1½=38½; B. M. Patey, 43—9=34; P. A. Sandford, 40—6=34; W. T. Watkins Birts, 42—7=35. Evelyn Jones Foursomes Cups.—W. T. Watkins Birts and G. E. H. Reader, 1 up.

EMPLOYMENT OF PRISONERS.

The Home Secretary has appointed a committee to review the methods of employing prisoners and of assisting them to find employment on discharge, and to report what improvements are desirable and practicable.

The members of the committee are Major Isidore Salmon, C.B.E., D.L., M.P. (chairman), Mr. C. E. Bartholomew, O.B.E., Mr. W. C. Crook, Miss Margery Fry, M.A., Mr. A. Hollins, Mr. J. J. Maxwell, Mr. H. R. Scott, and Mr. A. E. Watson, C.B.E.

The secretary of the committee is Mr. F. D. Forster, to whom all communications on the subject should be addressed at the Home Office, Whitehall, S.W.1.

YOUTH AND CRIME.

Mr. T. Hollis Walker, K.C., chairman of the Lindsey Quarter Sessions, in charging the Grand Jury at Lincoln recently, said that six of the twelve persons whose names appeared in the calendar were under twenty-one. Those who had the matter at heart, he said, were much perturbed to know what to do. There seemed to be a lowering of the normal standpoint of the youth of the country which was very discomforting.

SUNDAY OPENING OF CINEMAS.

The Home Office has issued a circular to all licensing authorities in connection with the Sunday opening of cinemas. The circular explains for the benefit of those who have to administer the new Act the provisions under which licences may be granted. It was stated at the Home Office that the circular was issued in fulfilment of a promise given in the House of Commons.

OWAIN GLYNDWR'S SEALS.

Mr. Lloyd John, solicitor, of Corwen, has presented to the Owain Glyndwr Memorial Hall, impressions of the seals of Owain Glyndwr. They were acquired by Mr. John twenty-five years ago from the French Record Office. The impressions are exact duplicates in wax of the lost originals.

SHERIFFS KNIGHTED.

The Lord Mayor-Elect of London, Alderman Percy Walter Greenaway, was received in audience by the King at Buckingham Palace on Monday last.

The King knighted Alderman Greenaway on his retirement as Sheriff of the City, and also received and knighted Mr. George Wilkinson, the other retiring Sheriff.

SOLICITORS' MANAGING CLERKS' ASSOCIATION.

LAW CLASSES, ELEVENTH SESSION, 1932-1933.

The Association has again arranged a series of classes for the forthcoming winter. As before, by the kind permission of the authorities, the classes will be held at the Royal Courts of Justice.

The Council of the Association, being satisfied from practical experience that students find one evening per week to be as much as they can satisfactorily undertake, have again arranged two courses only for the winter season, and they trust that this will be the means of increasing the number of students that will be able to attend.

The first course, "Principles of the Law of Tort," the lecturer being Mr. W. F. Lyons, LL.B., will be held on Wednesdays at 6.45 p.m., commencing 12th October, 1932, and ending 14th December, 1932.

The second course will be held on Mondays, at 6.45 p.m., commencing 16th January, 1933, and ending 20th March, 1933, when Mr. W. A. Ling will lecture on "Sales of Land."

Applications for tickets should be addressed to the Secretary at the office of the Association, Arundel House, Arundel Street, Strand, W.C.2, and should give the name, address and age of the applicant and the name of his or her employer. The application should also state which course the applicant desires to attend, and should be accompanied by the fee for attendance. Accommodation is strictly limited and applications will be dealt with in order of priority of receipt.

The fee for one course is 3s., and for both series 5s.

A ticket of membership will be sent on receipt of the prescribed fee and must be produced when demanded.

At the end of the Session examinations will be held on the subjects dealt with at each of the classes and prizes will be awarded. Any student attending the classes may sit for the examination, but managing clerks and articled clerks will not be eligible for a prize.

DATES OF AUTUMN ASSIZES.

The days and places fixed for holding the Autumn Assizes, 1932, are as follows :—

NORTHERN CIRCUIT.—Mr. Justice du Parcq and Mr. Justice Lawrence.—Saturday, 15th October, at Carlisle ; Thursday, 20th October, at Lancaster ; Monday, 24th October, at Liverpool ; Monday, 14th November, at Manchester.

NORTH WALES AND CHESTER CIRCUIT.—Mr. Justice Charles. —Thursday, 13th October, at Carnarvon ; Tuesday, 18th October, at Ruthin ; Saturday, 22nd October, at Chester.

MIDLAND CIRCUIT.—Mr. Justice Humphreys.—Thursday, 13th October, at Aylesbury ; Monday, 17th October, at Bedford ; Thursday, 20th October, at Northampton ; Tuesday, 25th October, at Leicester ; Tuesday, 1st November, at Lincoln ; Monday, 7th November, at Nottingham ; Monday, 14th November, at Derby ; Saturday, 19th November, at Warwick. Mr. Justice Mackinnon and Mr. Justice Humphreys —Wednesday, 30th November, at Birmingham.

SOUTH-EASTERN CIRCUIT.—Mr. Justice Branson.—Thursday, 13th October, at Cambridge ; Tuesday, 18th October, at Norwich ; Monday, 24th October, at Ipswich ; Saturday, 29th October, at Chelmsford. Mr. Justice Hawke —Thursday, 17th November, at Hertford ; Monday, 21st November, at Maidstone ; Tuesday, 29th November, at Kingston ; Saturday, 3rd December, at Lewes.

NORTH-EASTERN CIRCUIT.—Mr. Justice Goddard.—Saturday, 29th October, at Newcastle ; Wednesday, 9th November, at Durham ; Thursday, 17th November, at York ; Wednesday 23rd November, at Leeds.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. 1.	GROUP I Mr. JUSTICE EVE. Non-Witness	Mr. JUSTICE MAUGHAM. Witness. Part II.
Wed. Oct. 12	Mr. Ritchie	Mr. Hicks Beach	Mr. Jones	Mr. Hicks Beach
Thursday . 13	Blaker	Andrews	Hicks Beach	*Blaker
Friday 14	More	Jones	Blaker	Jones
Saturday .. 15	Hicks Beach	Ritchie	Jones	Hicks Beach

DATE.	GROUP I. Mr. JUSTICE BENNETT. Witness. Part I.	Mr. JUSTICE CLAUSON. Witness. Part II.	GROUP II. Mr. JUSTICE LUXMOORE. Witness. Part I.	Mr. JUSTICE FARWELL. Non-Witness.
Wed. Oct. 12	Mr.*Blaker	Mr.*Ritchie	Mr.*Andrews	Mr. More
Thursday . 13	Jones	Andrews	*More	Ritchie
Friday 14	*Hicks Beach	*More	Ritchie	Andrews
Saturday .. 15	Blaker	Ritchie	Andrews	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 20th October, 1932.

	Middle Price 5 Oct. 1932.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	107	3 14 9	3 11 2
Consols 2½%	73½	3 8 0	—
War Loan 5% 1929-47 Assented	100½	3 10 2	—
**War Loan 4½% 1925-45	102	—	—
Funding 4% Loan 1960-90	107	3 14 9	3 12 0
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	107	3 14 9	3 12 5
Conversion 5% Loan 1944-64	115	4 6 11	3 9 1
Conversion 4½% Loan 1940-44	111	4 1 1	2 16 11
Conversion 3½% Loan 1961 or after	98¾	3 10 11	—
Local Loans 3% Stock 1912 or after	86¼	3 9 6	—
Bank Stock	323	3 14 3	—
India 4½% 1950-55	105	4 5 9	4 2 1
India 3½% 1931 or after	85	4 2 4	—
India 3% 1948 or after	73	4 2 2	—
Sudan 4½% 1939-73	106	4 4 11	3 9 1
Sudan 4% 1974 Redeemable in part after 1950	105	3 16 2	3 12 4
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100xd	3 0 0	3 0 0
Colonial Securities.			
Canada 3% 1938	99	3 0 7	3 4 0
*Cape of Good Hope 4% 1916-36	101	3 19 2	3 14 6
*Cape of Good Hope 3½% 1929-49	99	3 10 8	3 11 7
Ceylon 5% 1960-70	112	4 9 3	4 4 10
*Commonwealth of Australia 5% 1945-75	106½	4 13 11	4 6 9
Gold Coast 4½% 1956	106	4 4 11	4 1 10
*Jamaica 4½% 1941-71	102	4 8 3	4 4 2
*Natal 4% 1937	101	3 19 2	3 15 1
*New South Wales 4½% 1935-45	101	4 9 1	4 1 10
*New South Wales 5% 1945-65	105	4 15 3	4 9 8
*New Zealand 4½% 1945	104	4 6 6	4 1 6
*New Zealand 5% 1946	108	4 12 7	4 3 9
Nigeria 5% 1950-60	112	4 9 3	4 0 2
*Queensland 5% 1940-60	103	4 17 1	4 10 11
*South Africa 5% 1945-75	110	4 10 11	4 0 0
*South Australia 5% 1945-75	105	4 15 3	4 9 8
*Tasmania 5% 1945-75	105	4 15 3	4 9 8
*Victoria 5% 1945-75	105	4 15 3	4 9 8
*West Australia 5% 1945-75	105	4 15 3	4 9 8
Corporation Stocks.			
Birmingham 3% 1947 or after	84½	3 11 0	—
*Birmingham 5% 1946-56	112	4 9 3	3 17 6
*Cardiff 5% 1945-65	108	4 12 7	4 3 9
Croydon 3% 1940-60	92	3 5 3	3 9 2
*Hastings 5% 1947-67	111½	4 9 8	3 18 4
Hull 3½% 1925-55	98	3 11 5	3 12 8
Liverpool 3½% Redeemable by agreement with holders or by purchase	97	3 12 2	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corporation	86	3 9 9	—
Manchester 3% 1941 or after	85	3 10 7	—
Metropolitan Water Board 3% "A" 1963-2003	86	3 9 9	3 10 10
Do. do. 3% "B" 1934-2003	87	3 9 0	3 10 0
*Middlesex C.C. 3½% 1927-47	99	3 10 8	3 11 10
Do. do. 4½% 1950-70	108xd	4 3 4	3 17 6
Nottingham 3% Irredeemable	82½xd	3 12 9	—
*Stockton 5% 1946-66	111	4 10 1	3 19 3
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	99½	4 0 5	—
Gt. Western Rly. 5% Rent Charge	112	4 9 3	—
Gt. Western Rly. 5% Preference	76½	6 10 9	—
L. Mid. & Scot. Rly. 4% Debenture	91	4 7 11	—
L. Mid. & Scot. Rly. 4% Guaranteed	76½	5 4 7	—
Southern Rly. 4% Debenture	93½	4 5 7	—
Southern Rly. 5% Guaranteed	102½	4 17 7	—
Southern Rly. 5% Preference	65½	7 12 8	—
‡L. & N.E. Rly. 4% Debenture	83½	4 15 10	—
‡L. & N.E. Rly. 4% 1st Guaranteed	64½	6 4 0	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date ; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

**To be repaid at par on 1st December, 1932.

THE SOLICITORS ACT, 1932

"Should provide a most valuable aid in acquiring a working knowledge of the Act." LAW JOURNAL.

BEING A KING'S PRINTER'S COPY OF THE ACT, BOUND UP WITH A FULL INDEX AND TABLES showing where the corresponding sections of the repealed Acts are to be found in the New Act and ***vice versa.***

"We have tested the Index and Tables; the former appears to be exhaustive, the latter accurate." LAW NOTES.

BY

W. E. WILKINSON, LL.D. (Lond.)

Solicitor of the Supreme Court

This Act, which came into force on the 1st October, consolidates the Law relating to Solicitors and repeals some twenty earlier Acts, and is of immense benefit to the profession. The above work greatly facilitates reference to the Law, and the Tables will be found most useful in tracing the corresponding sections.

Price 3s. 6d. net, or by post 3s. 10d.

The Solicitors' Law Stationery Society, Limited.

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27 & 28, WALBROOK, E.C.4. 6, VICTORIA STREET, S.W.1.
49, BEDFORD ROW, W.C.1. 15, HANOVER STREET, W.1.
LIVERPOOL: 19 & 21, NORTH JOHN STREET. **GLASGOW:** 66, ST. VINCENT STREET.

Legacies Subscriptions Donations

URGENTLY required to maintain the Poor Out-Patients' Department of the Royal Veterinary College. This Department is for the benefit of poor people who are unable to pay the fees of a veterinary surgeon to treat their sick and injured animals. This work of alleviating the sufferings of dumb animals has been carried on for over 140 years.

Scene at Out-Patients' Department.

Patron: HIS MAJESTY THE KING.
Principal:
PROF. F. T. G. HOBDAY, C.M.G., F.R.C.V.S., F.R.S.E.

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